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Supreme Court, U.S.
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In the OFFICE OF THE CLERK

Supreme Court of the United States

GABRIEL SEYMOUR, *et al.*,

Petitioners,

vs.

REGION ONE BOARD OF EDUCATION, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Did the Connecticut Attorney General violate the small town taxpayers' First Amendment rights of access to the courts by subjecting them to retaliatory harassment and public humiliation, forcing three of the five plaintiffs to withdraw from the case?

2. Did the Connecticut Superior Court violate the First Amendment by ordering the plaintiffs in a taxpayer suit involving school property taxes to turn over their personal income tax returns to the State Attorney General and by authorizing that official to question plaintiffs about their personal financial affairs and "biases"?

3. Did the Connecticut Supreme Court violate the taxpayer-plaintiffs' Fourteenth Amendment rights by ordering an unwarranted evidentiary hearing on standing; creating the opportunity for the State Attorney General to harass plaintiffs; causing a three-year delay in the proceedings; and then ignoring the taxpayers' claim that they had been deprived of their First Amendment rights?

4. Should the United States Supreme Court establish a presumption of confidentiality for personal income tax returns in Federal and State judicial proceedings?

Parties to the Proceeding

The original parties to the proceeding filed in the Connecticut Superior Court were:

Taxpayer-Plaintiffs:

Gabriel Seymour
Thomas R. Coolidge
Susan Dempsey
Stephen W. Jenks
Joyce Schurk

Defendants:

Region One Board of Education
Richard Blumenthal, Attorney General

The following parties were subsequently permitted to intervene:

Town of Salisbury
Town of Canaan

Following the initiation of the Attorney General's harassment strategy, the following plaintiffs withdrew in protest:

Thomas R. Coolidge
Susan Dempsey
Stephen W. Jenks

There are no corporate parties.

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties to the Proceeding	iii
Table of Cited Authorities	vii
Citations of Official and Unofficial Reports of Opinions and Orders Entered in the Case	1
Constitutional Provisions Involved in the Case	2
STATEMENT OF THE CASE	3
When Federal Question Was First Raised in the Court of First Instance (Litchfield County Superior Court)	5
When Federal Question Was First Raised in the Appellate Court (Connecticut Supreme Court)	8
ARGUMENT	
WHY CERTIORARI SHOULD BE GRANTED	
1. The Connecticut Attorney General's Retaliatory Policy Violated Petitioners' First Amendment Rights	10
2. Public Interrogation About Personal Finances During the Court Hearing Was Done Solely to Embarrass and Humiliate Plaintiffs	14
3. Connecticut's Highest Court Wholly Disregarded the State Attorney General's Violation of Petitioners' First Amendment Rights	18
4. The Constitutional Right of Access to the Courts Should Be at its Strongest in Taxpayer Actions	19

5. Compelled Disclosure of Personal Financial Information Has a Chilling Effect on the Right of Access to the Courts 20

6. The Connecticut Supreme Court Deprived Plaintiffs of Due Process by Requiring an Evidentiary Hearing on Standing Where the Complaint Challenged the Statute on its Face 24

CONCLUSION 27

APPENDIX

First Connecticut Supreme Court Decision, Ordering Hearing on Standing, August 20, 2002 ..... A-1

Superior Court Order Directing Production of Tax Returns, Feb. 3, 2003 ..... A-17

Plaintiff's Memorandum in Opposition to Unsealing of Tax Returns, etc. Feb. 27, 2003 ..... A-19

Plaintiff's Post-Hearing Memorandum (Excerpt), April 16, 2003 ..... A-25

Superior Court Decision Rejecting Plaintiffs' First Amendment Argument, May 23, 2003 ..... A-29

Plaintiffs' Motion to Suppress, June 2, 2003 ..... A-33

Superior Court Decision Dismissing Complaint, Sept. 22, 2003 ..... A-35

Brief of Plaintiffs-Appellants in Connecticut Supreme Court (Excerpt), Nov. 13, 2003 ..... A-45

Second Connecticut Supreme Court Decision, June 14, 2005 ..... A-61

TABLE OF CITED AUTHORITIES

	Page(s)
Cases	
Baggett v. Bullitt, 377 U.S. 360 (1964)	20
Baird v. State Bar of Arizona, 401 U.S. 1 (1971)	20
Bates v. Little Rock, 361 U.S. 516 (1960)	7, 21
Buckley v. Valeo, 424 U.S. 1 (1977)	7, 20, 21
Federal Sav. & Loan Ins. Corp. v. Krueger, 55 F.R.D. 512 (N.D. Ill. 1972)	21-22
Gibson v. Florida Legislative Comm., 372 U.S. 539 (1963)	7, 21
Keyishian v. Board of Regents, 385 U.S. 589 (1967)	20
Lamont v. Postmaster General, 381 U.S. 301 (1965)	20
Laird v. Tatum, 408 U.S. 1 (1972)	20
NAACP v. Alabama, 357 U.S. 449 (1958)	7, 21
NAACP v. Button, 371 U.S. 415 (1963)	7, 19, 21
Payne v. Howard, 75 F.R.D. 465 (D. D.C. 1977)	21
Poulos v. NAAS Foods, 959 F.2d 69 (7th Cir. 1992)	21
Premium Serv. Corp. v. Sperry & Hutchinson Co., 511 F.2d 225 (9th Cir. 1975)	21
Ryland v. Shapiro, 708 F.23 967 (5th Cir., 1983)	25-26
Shelton v. Tucker, 364 U.S. 479 (1960)	7, 21
Thomas v. Collins, 323 U.S. 516 (1944)	18

Statutes and Regulations

Supreme Court Rule 14(g)(i) 5

I.R.C. Section 6103 21

Conn. Gen. Stat. § 1-19(b) 21

Citations of Official and Unofficial Reports of Opinions and Orders Entered in the Case

Docket No.: LLI-CV-00-0082467-S
Litchfield County CT

July 3, 2000 Order granting Motion to Intervene (A. DiPentima, J.)

Seymour v. Region One Bd. of Educ., 2001 WL 51830, 28 Conn. L. Rptr. 508 (Conn. Super. Jan 02, 2001)

Seymour v. Region One Bd. of Educ., 261 Conn. 475, 803 A.2d 318, 168 Ed.Law Rep. 368 (Conn. Aug 20, 2002) (Printed in Appendix at A-1)

Nov. 27, 2002 Order granting motion to intervene (A. DiPentima, J.)

Dec. 17, 2002 Order denying Plaintiffs' motion for protective order (A. DiPentima, J.)

Feb. 3, 2003 Order granting AG's motion for direction to produce personal income tax returns. (M. Black, J.) (Printed in Appendix at A-17)

Seymour v. Region One Bd. of Educ., 2003 WL 21322943 (Conn.Super. May 28, 2003) (Printed in Appendix at A-29)

June 17, 2003 Order denying plaintiff's motion to suppress

Seymour v. Region One Bd. of Educ., 2003 WL 22245403, 35 Conn. L. Rptr. 515 (Conn.Super. Sep 23, 2003 (Printed in Appendix at A-35)

Sept. 23, 2003 Judgment of dismissal (M Black, J.)

Seymour v. Region One Bd. of Educ., 274 Conn. 92, 874 A.2d 742, 198 Ed.Law Rep. 645 (Conn. Jun 14, 2005) (Printed in Appendix at A-61)

Constitutional Provisions Involved in the Case

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

At the time this action was filed, petitioners Gabriel Seymour and Joyce Schurk were residents, property owners and taxpayers of the Town of Canaan in Litchfield County, Connecticut [the second smallest town in the state]. Along with being taxed to support other governmental functions, petitioners' properties were directly taxed by the Town to support the regional high school serving students from Canaan and five adjoining towns.

Petitioner Seymour is also the former First Selectman of the Town of Canaan, elected as a reform candidate in 1997 [the only woman to hold the office in its two-hundred-and-fifty-year history]. While she was a candidate for that office, Seymour discovered a wide disparity between the high school assessments on property owners in her town compared to wealthier neighboring towns with larger property tax bases. When she proposed to her fellow Selectmen that the Town bring suit to challenge the constitutionality of the state statute, the two-person opposition majority on the Board of Selectmen rejected the idea. After she left office at the end of her term to attend law school, petitioner and four other town residents filed this taxpayer action challenging the constitutionality of the regional high school tax statute on due process and equal protection grounds. The taxpayer plaintiffs alleged that property owners in the Town of Canaan were required to pay four times higher taxes to support each student at the regional high school than similarly situated taxpayers in other towns in Region One.

The taxpayer litigation was defended by the State Attorney General, who moved to dismiss the action on grounds of non-justiciability and lack of standing. The Litchfield County Superior Court dismissed the complaint on the first ground and the taxpayers appealed, resulting in the first decision in

the case by the Connecticut Supreme Court (set out in full text at A-1). The Supreme Court reinstated the complaint, but held that the record was insufficient to determine plaintiffs' standing and ordered an evidentiary hearing on that question.[1]

After the Supreme Court reinstated the complaint, the Assistant Attorney General in charge of the case launched a retaliatory campaign against the plaintiffs calculated to force them to withdraw their claims. The principal weapon used by the Attorney General was his demand for the personal income tax returns from four of the five plaintiffs for a five-year period. This was followed by questioning plaintiffs on their personal financial affairs and "biases". These proceedings were accompanied by prominent newspaper stories in the local press, humiliating plaintiffs and implying some improper reason for concealment on their part.

The Attorney General's retaliation strategy was supported by the lower court judges and had the desired chilling effect on three of the plaintiffs, who filed written notices of withdrawal (under protest) leaving the primary burden of going forward on plaintiff Seymour, who was subjected to continuing harassment and public humiliation by the Attorney General in the ensuing proceedings.

Petitioner's efforts to have the Connecticut Supreme Court rule on the constitutionality of these retaliatory tactics were met by total silence. Although the principal section of her brief and of her *pro se* oral argument dwelt entirely on the Attorney General's attack on her First Amendment rights, there was not a single mention of the issue in the Connecticut Supreme Court's detailed opinion, which totally ignored the issue. (A-61).

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[1] Petitioner argues that this direction was erroneous and that standing should have been found on the face of the complaint. (See Point 6, *infra*.)

When Federal Question Was First Raised In The Court Of First Instance (Litchfield County Superior Court)

Pursuant to Supreme Court Rule 14(g)(i) the following is a detailed chronology (including excerpts from the record) of petitioner's efforts to raise the Constitutional issues in the state courts and the way in which they were passed on by those courts.

General objections to the Attorney General's retaliation strategy were raised immediately following his service of deposition notices demanding production of Plaintiffs' personal income tax returns. Plaintiffs' first motion for a protective order was filed on November 29, 2002. It was renewed on January 24, 2003. Both motions were denied by the Superior Court. On February 27, 2003, on the eve of the evidentiary hearing in the Litchfield County Superior Court on the issue of standing, plaintiffs filed a detailed memorandum of law explicitly raising the First Amendment claim which petitioner seeks to have reviewed by this Court. Pursuant to this Court's Rule 14(g)(v), that memorandum [prepared with assistance from Yale Law School Legal Services] is set forth in full text in the Appendix to this petition, starting at page A-19. The memorandum starts off with the following summary of the Federal question:

> REQUIRING TAXPAYERS TO DISCLOSE CONFIDENTIAL PERSONAL INCOME TAX INFORMATION IN ORDER TO ESTABLISH STANDING IN TAXPAYERS' ACTIONS WILL HAVE A CHILLING EFFECT ON ACCESS TO THE COURTS
>
> 1. The constitutional right of access to the courts is at its strongest when it protects suits such as taxpayer actions that challenge government policies.

> The United States Supreme Court has repeatedly held that the right of access to the courts is protected under the First Amendment of the United States Constitution. *See e.g. Harrison v. St. Louis & S.F. Co.*, 232 U.S. 318, 332 (1914), *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972), *In re Primus*, 436 U.S. 412, 426 (1978), *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983), *BE&K Constr. Co. v. NLRB*, 122 S.Ct. 2390, 2396 (2002). (A-19–20)

The Superior Court wholly disregarded plaintiffs' Memorandum and permitted the Attorney General to question petitioner Seymour in open court on details of her personal finances — all subsequently reported in detail in the local press.

Following the evidentiary hearing, plaintiffs filed a Post-Hearing Memorandum on April 16, 2003, relevant portions of which are reprinted in the Appendix (starting at A-25). That memorandum also raised the Federal constitutional question (in Point VI), headed as follows:

> PLAINTIFFS' FIRST AMENDMENT RIGHTS HAVE BEEN REPEATEDLY VIOLATED BY DEFENDANT BLUMENTHAL IN THIS PROCEEDING BY HIS AGGRESSIVE DEMANDS FOR PERSONAL TAX RETURNS AND HIS VIOLATION OF THE SUPERIOR COURT'S SEALING ORDER DURING HIGHLY PUBLICIZED COURT PROCEEDINGS

Plaintiffs' memorandum details the Attorney General's retaliatory tactics, and includes the following description of the Federal constitutional question:

> The First Amendment to the U.S. Constitution and Article First, Section 10 of the Connecticut Constitution both guarantee citizens a right of access to the courts. The courts have repeatedly recognized that compelling

disclosure of personal financial information from citizens has a "chilling effect" on First Amendment rights. *See Buckley v. Valeo*, 424 U.S. 1, 64 (1977) (*citing e.g. Gibson v. Florida Legislative Comm.* 372 U.S. 539 (1963); *NAACP v. Button*, 371 U.S. 425 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (158)).

> "Significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest."
>
> *Buckley*, 424 U.S. at 64 (citing *NAACP v. Alabama*, 357 U.S. at 461.)

The forced disclosure of detailed personal financial information constitutes a violation of their constitutional rights by discouraging them (and other citizens) from seeking court relief. Such violation of constitutional rights has tainted the Attorney General's motion to dismiss and warrants denial of the motion on the basis of that conduct alone.

(A-27)

Instead of ruling on the merits of plaintiffs' constitutional arguments, the Superior Court Judge, responding to a motion by the Town of Canaan, joined in by the Attorney General and other defendants, said that she had already ruled on those issues and would not reconsider them:

> c) Plaintiffs' brief makes extended reference to issues that have already been decided by the court regarding the taking of evidence and disclosure of financial documents. These decisions were made by the court after

> extended opportunity for argument. Again these issues are argued without filing a Motion to Reargue. (Pp. 12-15.) The Court considers said material to be argument rather than substantive. The Court has previously ruled on said matters. The rulings stand.
>
> (A-30–31)

Petitioners raised the Federal constitutional question for a third time in the trial court in a Motion to Suppress the Attorney General's public questioning of petitioner Seymour on her personal finances, filed on June 2, 2003 (reproduced in the Appendix at A-33). The Selectmen of the Town of Canaan, seeing their opportunity to join in the harassment of the taxpayer-plaintiffs, filed a claim *against petitioner Seymour's mother* for allegedly past-due motor vehicle property taxes based on the Attorney General's public questioning of Seymour about the ownership of the car she was driving — immediately publicized on the front page of the *Lakeville Journal* (the hometown weekly newspaper). [The Town's claim was subsequently withdrawn after the mother filed both an administrative and judicial appeal, but not until after substantial public humiliation of petitioner and her family.] (Exs. A, B and C referred to on A-33) The Superior Court judge sustained the defendants' objections to the motion on June 17, 2003.

On September 23, 2003, the Superior Court filed its Memorandum Decision granting the Attorney General's motion to dismiss for lack of standing, and making no mention of the Constitutional issues raised by plaintiffs.

When Federal Question Was First Raised In The Appellate Court (Connecticut Supreme Court)

Plaintiffs-Appellants' brief in the Connecticut Supreme Court on the appeal from the dismissal of their complaint for lack of standing expressly cited the failure of the Superior Court to protect plaintiffs against the Attorney General's retaliatory harassment:

> This appeal challenges the Superior Court's erroneous dismissal of the complaint as a matter of law. In addition, all of the original plaintiffs appeal from the Superior Court's repeated failure to protect plaintiffs against the Attorney General's highly publicized demands for personal income and financial information having no bearing whatsoever on standing, as a violation of plaintiffs' rights of access to the Courts and of equal protection, in violation of the U.S. and Connecticut Constitutions.

The constitutional issue was also identified in that same brief as one of the three issues on appeal to the Connecticut Supreme Court:

> 3. Did the trial court violate plaintiffs' Constitutional rights by requiring them to submit to the harassment, intimidation and public humiliation by the Attorney General? Discussed in Point III at pages 16-31.

The Argument section of that brief comprised a total of 25 pages, of which 16 pages were directed specifically at the Federal constitutional question presented here. Those pages are reproduced in their entirety in the Appendix starting at page A-45.

Point III of that brief is headed as follows:

POINT III

THE TRIAL COURT FAILED TO PROTECT PLAINTIFFS FROM THE ATTORNEY GENERAL'S PUNITIVE STRATEGY OF HARASSMENT, INTIMIDATION AND PUBLIC HUMILIATION VIOLATING THEIR CONSTITUTIONAL RIGHTS OF ACCESS TO THE COURTS AND OF EQUAL PROTECTION

The oral argument of the appeal before the Connecticut Supreme Court also concentrated heavily on the First Amendment issue.

The Connecticut Supreme Court wholly disregarded the constitutional issue and did not mention a single word about it in its opinion. (See A-61, *et seq.*) As a result, the Attorney General's publicly-announced retaliation strategy has now been officially sanctioned by the state's highest court. Connecticut taxpayers have effectively been given a clear demonstration and unmistakable object lesson of what happens to citizens who seek access to the state's courts to challenge state actions or unfair state statutes. They now face the Attorney General's threat of compelling anyone who dares to bring such a proceeding to produce their personal income tax returns and to be questioned about their personal finances in open Court so the answers can be reported to their neighbors via their community newspapers.

ARGUMENT

WHY CERTIORARI SHOULD BE GRANTED

1. The Connecticut Attorney General's Retaliatory Policy Violated Petitioners' First Amendment Rights

On February 3, 2003, the Connecticut Attorney General declared in open court, in the presence of news media, that any taxpayer who brings a constitutional challenge to local taxes will be subjected to questioning on personal finances and bias. The Superior Court confirmed this policy, chilling First Amendment rights for all Connecticut citizens.

The Attorney General's policy announcement came about under these circumstances:

On the taxpayers' first appeal to the Connecticut Supreme Court, where they successfully overturned the Attorney General's original dismissal of this action, the Court directed

the trial court to conduct an evidentiary hearing into the question of standing. (261 Conn. 475, at 491 (A-16))

Using the pretext of preparation for the evidentiary hearing, the State Attorney General initiated a retaliatory strategy calculated to force individual taxpayers to withdraw from the case by threatening to expose their private financial affairs to public view.[2] The Attorney General served Notices of Depositions on four of the five original named plaintiffs requiring them to produce:

> "Complete copies of deponent's federal and state income tax returns for the last five (5) years."

Plaintiffs promptly moved for a protective order, which was denied by the Superior Court without opinion (DiPentima, J).

One of the avowed goals of the Attorney General's strategy was to force the taxpayers to drop their lawsuit. This was openly acknowledged by the Assistant Attorney General in his memorandum of law filed in opposition to plaintiffs' first motion for a protective order:

> "If the four named plaintiffs other than Ms. Seymour *wish to withdraw their claims, they are free to do so.*"
>
> (Emphasis added.) (Memo 12/3/02, p.5)

Plaintiffs' motion for a protective order quickly became front-page news in the *Lakeville Journal*, the principal newspaper serving the Town of Canaan and neighboring towns in Region One. A four-column-wide front-page headline declared:

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[2] The only plaintiff omitted from this strategy was Mrs. Schurk, a widow living on a pension who plainly lacked the resources to carry on this litigation on her own.

PLAINTIFFS IN REGION 1 LAWSUIT RELUCTANT TO REVEAL FINANCES

FALLS VILLAGE — Gabriel Seymour and four other plaintiffs who have brought a lawsuit against the Region 1 Board of Education and state Attorney General Richard Blumenthal have filed a motion with the Litchfield Superior Court saying they do not want to provide information on their state and federal income taxes and on taxes paid on their motor vehicles.

Following the *Lakeville Journal* newspaper article, plaintiffs Seymour and Coolidge appeared at the Attorney General's office for examination by the Assistant Attorney General (with participation by counsel for Region One and the intervenor town governments of Salisbury and Canaan). Ms. Seymour delivered her personal income tax returns to the Attorney General in a sealed envelope. The Assistant Attorney General questioned plaintiffs Seymour and Coolidge about their private financial affairs, living arrangements, and even political party affiliation. At the end of the first day of depositions, plaintiffs filed a renewed motion for a protective order. The Superior Court held an open court hearing on plaintiffs' motion on February 3, 2003, attended by representatives of the press.

It was during the hearing on plaintiffs' renewed motion for a protective order on February 3, 2003, that the Assistant Attorney General declared that his purpose *was to inform the public at large* that any persons who bring a taxpayer action in Connecticut will face interrogations concerning their tax returns, personal financial affairs, and "biases".

> "This is a case of significant public importance. It should not be tried under some sort of veil of secrecy. This is a case that will affect public school children, not just in Region One, but throughout the state. * * * This is not some pet project of a couple of taxpayers.

> It's more serious than that. This has the potential for threatening the financing of public schools in the State of Connecticut. *If people want to be heard in a public forum about this, they have to be willing to answer questions about whether they have the right to bring the case to this forum at all."* (Emphasis added.)

The Assistant Attorney General was emphatic in declaring that he was stating the general policy of his office:

> "Plaintiffs cannot come into court and put the machinery of the courts in motion and then try to hide under a rock with respect to relevant questions of their financial circumstances. . . . I think it's important that a message not be sent to the public and the State at large that this kind of case is going to be conducted under some sort of secret orders, some sort of sealing where the nature of the plaintiffs and their biases and their interests. . . is something that can't be viewed by the public."

The Attorney General's purpose was and is unmistakable — to discourage the bringing of taxpayer suits by threatening every taxpayer in Connecticut with harassment and public humiliation if he or she should attempt to do what these taxpayers did.

Without hesitation, the Superior Court Judge immediately authorized the Attorney General to continue his interrogation of plaintiffs concerning their personal finances and private affairs. The Court then entered a formal order directing the plaintiffs to produce their personal income tax returns (temporarily under seal). (A-17)

The court proceeding was reported in the *Waterbury Republican-American*, which quoted the Judge as saying:

> "The plaintiffs brought the action. They cannot then run from the action and state that they cannot be deposed

or that they should not be required to answer to the defendants," Black said.

Faced with the Attorney General's threat, and its unequivocal endorsement by the Superior Court, three of the plaintiffs[3] withdrew from the case, leaving plaintiffs Seymour and Schurk to continue the fight alone. The reason given by the three plaintiffs in their written withdrawals was significant:

> "It is plaintiffs' belief that the Superior Court's ruling in this case requiring any taxpayer who challenges the fairness of property taxes to turn over all of his or her personal income tax returns for five years and undergo unlimited questioning as to his or her 'wherewithal' and possible 'bias' is unreasonable and violates individual rights under the Fourteenth Amendment as well as state constitutional guarantees of free speech, due process and equal protection."

Attached to the withdrawal notices were copies of four local newspaper stories demonstrating the high level of publicity surrounding the Superior Court's order requiring plaintiffs to disclose the contents of their tax returns and details of their private lives and personal finances. Through these tactics and highly-publicized pronouncements, the state's highest law enforcement officer and the state's primary trial court directly violated the First Amendment's guarantee of citizen access to the courts.

2. <u>Public Interrogation About Personal Finances During the Court Hearing Was Done Solely to Embarrass and Humiliate Plaintiffs</u>

At the outset of the hearing in Litchfield Superior Court on February 27, 2003, plaintiffs handed up to the Court a memorandum of law "in opposition to unsealing of tax returns

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[3] [One of them a direct descendant of Thomas Jefferson]

or public questioning about their personal finances." (A-19) (Emphasis added.)

The Court totally disregarded plaintiffs' memorandum and allowed the Attorney General to question plaintiff Seymour about personal financial details wholly unrelated to the case.[4]

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[4] *By Mr. Urban* [Assistant Attorney General]:

Q Now the property that you live in and pay taxes on, you've run a business out of that property, correct?

A Correct.

Q And in your highest grossing year, that business grossed over $100,000, correct?

A Correct.

Q And, in fact, you've had an employee working out of that property for you for several years, have you not?

MR. TRUEBNER: I'm going to object, Your Honor, on grounds of relevancy to these questions.***

THE COURT: I'm going to allow it.

By Mr. Urban: (Continuing)

Q Now, the property that you pay taxes on as your home and out of which you operate the business, you paid $177,000 in cash for that property?

A I did.

Q And thus you hold no mortgage on the property?

A Correct.

MR. TRUEBNER: I renew the objection, Your Honor.***

THE COURT: I'm going to allow the question.

By Mr. Urban: (Continuing)

Q The adjacent property on which you pay taxes was purchased by your mother, correct?

A Correct.

Q And you, in fact, earn — earn rent on that adjacent property from someone who leases the small dwelling that's on the property, correct?

The results appeared a few days later in the *Waterbury Republican-American* under the headline:

SEYMOUR DISCLOSES
PERSONAL FINANCES
IN TAX CHALLENGE

***

Seymour was required by the court to provide her personal income information to the state's assistant attorney general, Ralph Urban, in depositions. Under questioning from Urban during the hearing, Seymour testified that:

- She paid $177,000 in cash for her home in Falls Village and, therefore, was not required to carry a mortgage;

A Correct.

Q And —

A I have — sorry.

Q Currently you're attending law school?

A Correct.

Q And your father's paying for that, although you're going to repay him?

A Correct.

Q And that's about $22,000 a year?

A Correct.

Q And the motor vehicle that you drive belongs to your mother?

MR. TRUEBNER: Judge, I'm going to renew my objection. We're really getting far afield at this point.

THE COURT: I would agree at this point.

MR. URBAN: I don't have anything further, Your Honor.

(2/27/03 Transcript, pp. 91-96)

- Her mother gave her the adjacent property lot from which she earns rental income.
- She conducts a business out of her home, sometimes employing help, which has generated more than $100,000 during its best year.
- She has no children and no relatives in the Region 1 school system.
- She has never attended public schools.
- Her father is paying $23,000 a year to send her to law school.
- The car she drives belongs to her mother, who lives in Salisbury.

Truebner objected that Urban's questioning was irrelevant, but Urban argued that personal finance issues "go to the heart" of whether a taxpayer has standing to bring forth a lawsuit such as Seymour's.

"The law can't be that a Bill Gates has standing as a taxpayer in the same order" as someone who earns a lot less, Urban said, "otherwise the courts would be flooded with similar cases."

The Superior Court judge who presided over the evidentiary hearing was the same judge who allowed the Attorney General to compel production of the plaintiffs' personal income tax returns; the same judge who echoed the Attorney General's public statement threatening any future taxpayer plaintiff with questioning about personal finances and bias; and the same judge who allowed public questioning of the taxpayer-plaintiffs about personal financial matters during the open hearing. The Judge refused to consider plaintiffs' post-hearing argument that the AG's harassment violated plaintiffs' constitutional rights. (A-30–31) The Judge then issued a decision disregarding all of plaintiffs' arguments and evidence of injury and adopting all of the Attorney General's arguments, resulting in the final judgment denying standing

which is the subject of this petition. (A-35) The Superior Court judge's actions and rulings from the outset disregarded plaintiffs' First Amendment rights, and never wavered from that stand despite the increasing harassment and humiliation intentionally inflicted by the Attorney General's conduct. The entire proceeding was tainted from start to finish, and should now be vacated and set aside.

3. Connecticut's Highest Court Wholly Disregarded the State Attorney General's Violation of Petitioners' First Amendment Rights

The retaliatory actions of the Attorney General occupied over half of petitioners' brief on appeal to the Connecticut Supreme Court and was the fundamental topic at oral argument. Yet the Court's published opinion makes no mention of the issue whatsoever, not even in a footnote. This silence implicated the state's highest court in condoning such actions — in defiance of the rulings of this Court on First Amendment protections. It was the duty of Connecticut's highest court to draw the line between acceptable state action and individual freedoms, but it failed to do so. As this Court said in *Thomas v. Collins*, 323 U.S.516, 529 (1944):

> The case confronts us again with the duty our system places on this court to say where the individual's freedom ends and the State's power begins.

In *Collins*, the Court noted the equal importance the right of petition holds with freedom of speech and press:

> It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peacefully to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They

> are cognate rights, cf. *De Jonge v. Oregon*, 299 U.S. 353, 364, and therefore are united in the First Article's assurance. CF. 1 Annals of Congress 759-760.
>
> (Ibid. at p. 530)

Connecticut's top court not only abandoned its responsibility to protect Connecticut citizens from abuse, but *sub silentio* effectively encouraged the Attorney General to pursue the course he had publicly declared as a warning to future would-be plaintiffs in his appearance before the Superior Court — every citizen who files a taxpayer suit will face compelled disclosure of personal income tax returns and personal interrogation on finances and political views.

4. The Constitutional Right of Access to the Courts Should be at its Strongest in Taxpayer Actions

Time and again the United States Supreme Court has stressed that the right of access to the courts is protected under the First Amendment of the United States Constitution. *See e.g., Harrison v. St. Louis & S.F.R. Co.*, 232 U.S. 318, 332 (1914); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *In re Primus*, 436 U.S. 412, 426 (1978); *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983); *BE&K Constr. Co. v. NLRB*, 122 S. Ct. 2390, 2396 (2002).

This Court has explained that "the right of access to the courts is. . .but one aspect of the right of petition" guaranteed by the First Amendment. *California Motor Transport Co.*, 404 U.S. at 510. As such, the right is most squarely implicated when litigants "use. . .courts to advocate their causes and points of view." *BE&K Constr. Co. v. NLRB*, 122 S. Ct. at 2396 (quoting *California Motor Transport Co.*, 404 U.S. at 510.) *See also NAACP v. Button*, 371 U.S. 415 (1963); *In re Primus*, 436 U.S. 412, 426 (1978). Following from the "same philosophy" that protects political protest directed at other

branches of the government, *California Motor Transport Co.*, 404 U.S. at 510, the federal constitutional right to access to the courts is at its strongest when it protects litigation, such as taxpayer actions, aimed at challenging government policies.

In *Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142 at 148, 28 S.Ct. 34, 52 L.Ed. 148 (1997), the Supreme Court characterized the right of access to the courts as follows:

> The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution.

5. Compelled Disclosure of Personal Financial Information Has a Chilling Effect on the Right of Access to the Courts

The United States Supreme Court "has found in a number of cases that constitutional violations may arise from the deterrent, or 'chilling' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights." *Laird v. Tatum*, 408 U.S. 1, 11 (1972) (*citing, e.g., Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); *Baggett v. Bullitt*, 377 U.S. 360 (1964).)

The Supreme Court has repeatedly found that compelled disclosure can seriously infringe on rights guaranteed by the First Amendment. *Buckley v. Valeo*, 424 U.S. 1, 64 (1977)

(*citing, e.g., Gibson v. Florida Legislative Comm.*, 372 U.S. 539 (1963); *NAACP v. Button*, 371 U.S. 415 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958).) "Significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP v. Alabama* we have required that the subordinating interests of the State must survive exacting scrutiny. . . . This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." *Buckley*, 424 U.S. at 64 (*citing NAACP v. Alabama*, 357 U.S. at 461.)

Federal and state statutes alike protect the confidentiality of federal income tax returns. *I.R.C.* § 6103. *Conn. Gen. Stat.* § 1-19(b). While neither the Supreme Court of the United States nor Connecticut state courts have ruled directly on the matter, numerous federal courts have extended this protection to the discovery process. *See e.g., Poulos v. NAAS Foods*, 959 F.2d 69, 74-75 (7th Cir. 1992); *Premium Serv. Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir. 1975) (holding that tax returns may not be discovered in antitrust suit); *Federal Sav. & Loan Ins. Corp. v. Krueger*, 55 F.R.D. 512, 514 (N.D. Ill. 1972) (determining that tax returns may not be discovered where not made an issue); *Payne v. Howard*, 75 F.R.D. 465 (D. D.C. 1977) (holding that I.R.C. section 6103 should be broadly construed to further a policy of preventing indiscriminate disclosure of income). *Federal Sav. & Loan Ins. Corp.*, 55 F.R.D. at 514 (N.D. Ill., 1972) presents a typical rationale for such a policy:

> The court recognizes that the statutes cited do not provide for absolute privilege of returns even in the hands of the government. . . . However, it is the opinion of this

> court that the statutes cited reflect a valid public policy against disclosure of income tax returns. This policy is grounded in the interest of the government in full disclosure of all the taxpayer's income which thereby maximizes revenue. To indiscriminately compel a taxpayer to disclose this information merely because he has become a party to a lawsuit would undermine this policy. . . . Although many district courts have addressed themselves to this issue there is a paucity of opinions directly in point from Court of Appeals and the Supreme Court. After a complete review of the cases it is the opinion of this court that the case of *Kingsley v. Delaware, Lackawanna & Wester R. Co.*, supra, represents the best view. In that case the court carefully reviewed the authorities and came to the conclusion that the tax returns were subject to discovery only "where a litigant himself tenders an issue as to the amount of his income."

The harassment, intimidation and public humiliation of plaintiffs by the Attorney General described above, and the orders of the Superior Court supporting the Attorney General's actions, contaminated the proceedings below and independently require summary reversal of the Connecticut Supreme Court's dismissal of the action on standing grounds.

Such actions by judges and state officials destroy the nation's most precious citizen rights, which are vital in small towns like the Town of Canaan. It is the role of the Connecticut courts to protect citizen access to the courts, not to block and discourage it, as two Superior Court judges and five Supreme Court judges have done in this case. Taxpayer suits are part of the essence of democratic government, which has its roots in every small town across the country.

The chilling of the First Amendment right of access to the courts by intentional state-sanctioned public humiliation and embarrassment is exactly the type of wrong the constitution

is designed to prevent. That is what was allowed to happen here.

The Superior Court's Memorandum of Decision and the Attorney General's Post-Hearing Memoranda *made no reference whatsoever to plaintiffs' incomes or other personal financial affairs or "biases" as having any bearing on plaintiffs' standing.* These tacit admissions by the Attorney General and the Superior Court — the parties directly responsible for the ugly harassment, intimidation and public humiliation of plaintiffs — show that the sole intent of the strategy was not evidentiary but to punish plaintiffs for exercising their right to challenge the constitutionality of state legislation, and to warn other citizens not to attempt to do the same.

Small town newspaper publicity may seem like a small matter to those who live in cities, but to residents of small towns, where everyone knows everyone else and has daily encounters with one's neighbors, small town newspaper stories can be devastating. The destructive power of local newspaper reporting is multiplied by the participation of state officials and particularly the pronouncements of judges. The small town newspaper is the most important public forum both for generating humiliation and embarrassment and for protecting one's personal rights.

Delegate Eleanor Roosevelt stated the principle forcefully to the United Nations at its organization meeting in San Francisco in 1948:

> Where, after all, do universal human rights begin? In small places close to home — so close and so small they cannot be seen on any maps of the world. Yet the are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice,

> equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

6. The Connecticut Supreme Court Deprived Plaintiffs of Due Process by Requiring an Evidentiary Hearing on Standing Where the Complaint Challenged the Statute on its Face

By ordering an evidentiary hearing on standing, the Connecticut Supreme Court opened the door to retaliatory actions by the Attorney general and imposed a three-year delay on the prosecution of their claim. Both results were a denial of due process.

There is no allegation in the complaint that any of the activities of the Region One Board of Education were wrongful, improper or wasteful. The sole allegation in the complaint is the unfairness on its face of the statutory formula for allocating school costs to small towns with smaller property tax bases. The challenge was to the statute, not to the operation of the school. This did not require any further evidence to establish standing for taxpayers who had concededly paid the unfair tax over many years.

The Connecticut Supreme Court acknowledged that even the defendant did not challenge the adequacy of the complaint to establish standing:

> The defendant does not challenge, for standing purposes, the sufficiency of the plaintiffs' allegation that the tax burdens on the plaintiffs and other taxpayers in Canaan for educating their students is substantially greater than the equivalent cost to taxpayers in every other member town in the district except for North Canaan. This presumably satisfies the pleading requirement that

> a taxpayer allege that the challenged statute "in some ... fashion, [other than a simple increase in taxes] caused her irreparable injury in her capacity as a taxpayer." (A-15)

That should have settled the standing issue. The matters later raised by the Attorney General should have been reserved for a trial on the merits, where all of the plaintiffs could have participated and would not have been harassed by the Attorney General's public questioning about their personal finances — forcing three of them to drop out of the case.

The Connecticut Supreme Court's 2002 direction to hold an evidentiary hearing on standing deprived the plaintiffs of due process by putting procedural obstacles, delay and costs in their path — and by opening the door for the State Attorney General's retaliatory strategy.

The result of the Supreme Court's erroneous ruling in 2002 was two-fold:

1. Subjecting plaintiffs to retaliatory actions which forced three of the original plaintiffs to withdraw.

2. Imposing a delay of three years before commencement of the process of reaching the merits, with all of the attendant legal costs and other negative results.

Unwarranted delay caused by state officers is itself a denial of due process and equal protection. See *Ryland v. Shapiro*, 708 F.23 967, 974 (5th Cir., 1983). In that case, the actions of local officials prevented the timely filing a wrongful death claim.

> [W]e have previously held that "if state officers conspire ... in such a way as to defeat or prejudice a litigant's rights in state court, that would amount to a denial of equal protection of the laws by persons acting under color of state law." *Dinwiddie v. Brown*, 230 F.2d

465, 469 (5th Cir.), *cert. denied*, 351 U.S. 971, 76 S.Ct. 1041, 100 L.Ed. 1490 (1956). Conduct by state officers which results in delay in the prosecution of an action in state court may cause such prejudice. As we stated in *Rheuark v. Shaw*, 628 F.2d 297 (5th Cir. 1980), *cert. denied*, 45 U.S. 931, 101 S.Ct. 1392, 67 L.Ed.2d 365 (1981):

> Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take short cuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. But even these are not the worst of what delay does. The most erratic gear in the justice machinery is at the place of fact finding, *and possibilities for error multiply rapidly* as time elapses between the original fact and its judicial determination.

Id. at 303-04 n. 10 (quoting *Southern Pacific Transportation Co. v. Stoot*, 530 S.W.2d 930, 931 (Tex. 1975) (emphasis added).

(at 974)

The Connecticut Supreme Court's decision should be reversed on this ground alone.

CONCLUSION

The retaliatory actions by the Connecticut Attorney General, sanctioned by the Connecticut Superior Court and approved by the Connecticut Supreme Court, require this Court to vacate the judgment of dismissal below, and to remind state officials and judges that taxpayer actions are a constitutionally-protected instrumentality of our democracy.

The dismissal for lack of taxpayer standing of this facial challenge to the constitutionality of the state statute provides an additional ground why the judgment should be vacated and set aside on the merits, with appropriate instructions to the courts below on the correct standards and procedures to follow when taxpayers directly challenge the provisions of a statute on its face.

In addition, the duty of judges to protect the confidentiality of individual income tax returns, which has never been articulated by this Court, should be clearly stated by this Court to protect personal freedoms from a repetition of the kind of official abuse that occurred here.

Dated: New York, New York
September 8, 2005

Respectfully submitted,

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APPENDIX

GABRIEL SEYMOUR ET AL. *v.* REGION ONE BOARD OF EDUCATION ET AL.
(SC 16650)

Borden, Norcott, Palmer, Vertefeuille and Zarella, Js.

Argued May 20 — officially released August 20, 2002

Gabriel Seymour, certified legal intern, with whom was *Eugene P. Falco*, for the appellants (plaintiffs).

Ralph E. Urban, assistant attorney general, with whom, on the brief, were *Richard Blumenthal*, attorney general, and *Bernard F. McGovern, Jr.*, assistant attorney general, for the appellee (defendant Richard Blumenthal).

Opinion

BORDEN, J. The principal issue in this appeal[1] is whether the plaintiffs' challenge to the constitutionality of the financing system for regional school districts pursuant to General Statutes § 10-51 (b),[2] presents a nonjusticiable political

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[1] The plaintiffs appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 65-1 and General Statutes § 51-199 (c).

[2] General Statutes § 10-51 (b) provides: "For the purposes of this section, 'net expenses' means estimated expenditures less estimated receipts as presented in a regional school district budget. On the date or dates fixed by the board, each town in the district shall pay a share of the cost of capital outlay and current expenditures necessary for the operation of the district. The board shall determine the amount to be paid by each member town. Such amount shall bear the same ratio to the net expenses of the district as the number of pupils resident in such town in average daily membership in the regional school district during the preceding school year bears to the total number of such pupils in all the member towns, provided that the board may recalculate such amount based on the number of pupils in average daily membership in the regional school district for the current school year and may adjust each member town's payment to the regional school district for the following fiscal year by the difference between the last such payment and the recalculated amount. Until the regional school district has been in operation for one year, such

question. The plaintiffs, Gabriel Seymour, Thomas R. Coolidge, Susan Dempsey, Stephen W. Jenks and Joyce Schurk, claim that the trial court improperly dismissed their complaint on the grounds of nonjusticiability. We conclude that the plaintiffs' claim is justiciable and, accordingly, we reverse the judgment of the trial court to the contrary.

The plaintiffs, who are taxpayers in the town of Canaan, brought this declaratory judgment action[3] against the defendants, Region One board of education (board) and Richard Blumenthal, the attorney general,[4] seeking a judgment: (1) declaring § 10-51 (b) unconstitutional on its face and as applied; and (2) directing the board to change its system of cost allocation among its member towns so that the tax burden falls equally on all taxpayers in the regional school district served by the board. The defendant moved to dismiss the complaint on the grounds that: (1) the plaintiffs lack standing; and (2) the plaintiffs' claims are nonjusticiable

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amounts shall be based on the average daily membership of pupils in like grades from each of such towns at any school at which children were in attendance at the expense of such towns during the preceding school year."

[3] The plaintiffs asserted in their complaint that all parties who have an interest in its subject matter were given reasonable notice pursuant to Practice Book § 17-56 (b). These parties, whom the plaintiffs identified by a certificate appended to the complaint, were: each individual member of the named defendant, Region One board of education, who are elected from each of the six member towns of the regional school district; the first selectmen of each of those towns; the state commissioner of education; and each of the other regional boards of education in the state. No question has been raised regarding the sufficiency of these notices.

[4] In addition, the town of Salisbury intervened as a defendant, and relies on the brief of the attorney general in this court. The board takes no position regarding the validity of the plaintiffs' complaint. Furthermore, only the attorney general moved to dismiss the case in the trial court. Therefore, for purposes of this appeal, we refer to the attorney general as the defendant.

because they present a political question. The trial court dismissed the complaint on the ground of nonjusticiability.[5] This appeal followed.

In their complaint, the plaintiffs made the following allegations. They are taxpayers in Canaan, which is one of the six member towns of Regional School District Number One (district), the other towns being Cornwall, Kent, North Canaan, Salisbury and Sharon. The costs of education for high school students and for certain kindergarten through eighth grade students are assessed on the towns by the board according to the formula set forth by § 10-51 (b). That formula assesses each member town an amount that "bear[s] the same ratio to the net expenses of the district as the number of pupils resident in such town in average daily membership in the . . . district during the preceding school year bears to the total number of pupils in all the member towns. . . ."[6] General Statutes § 10-51 (b). Because "[l]ocal property taxes are the principal source of revenue for public schools," because the statutory formula "disregards variations in the total taxable property in each town," and because Canaan has substantially less valuable taxable property than every other town in the district, except for North Canaan, "the tax burden on [the] plaintiffs and other taxpayers" in Canaan for educating their students "is substantially greater than the equivalent cost to taxpayers in every other member town . . . except for North Canaan."

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[5] Because the trial court determined that the claim was nonjusticiable, it did not address the question of the plaintiffs' standing. We consider that question in part II of this opinion.

[6] In other words, and in general terms, each town pays that percentage of the district's expenses equivalent to the percentage of the total number of students served by the district that reside in that town. In effect, costs are assessed on a per resident student basis.

The plaintiffs further alleged that "education costs constitute the single largest expense in most town budgets," and that "the unequal burdens of the present regional cost allocation formula sharply impact the total tax burden on small town taxpayers," such as the plaintiffs. "As a result, § 10-51 (b) unfairly discriminates against small Connecticut towns by forcing them to pay an unequal share of the expenses of educating students [as compared to] their bigger and wealthier neighbors."

In addition, the plaintiffs further alleged that "[t]he incidents of taxation should fall, as far as possible, equally on all similarly situated. Such equal taxation is mandated by the due process and equal protection provisions of both the United States and Connecticut Constitutions. All persons similarly circumstanced should be treated alike.... The Region One cost assessment formula based simply on student ratios violates this constitutional principle because the tax burden per student falls much more heavily upon the taxpayers of Canaan (and North Canaan) than on similarly situated taxpayers of surrounding municipalities. This fundamental inequality of taxation can only be corrected by directing the establishment of a uniform tax rate applicable to all taxpayers throughout the Region." The plaintiffs offered, by way of further allegation, a "constitutional ... method for determining regional cost allocations ... by dividing the projected total net education expenses for the region by the total equalized Grand List of taxable property for all member towns combined, thereby establishing a single regional [mill] rate to be assessed equally against all property in all member towns."[7]

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[7] In other words, and in general terms, the plaintiffs alleged that the unconstitutionality of which they complain may be remedied by making the regional school district a new taxing district, and by the district assessing each member town an amount determined, not by the number of its students serviced by the district, but by a new uniform mill rate

Finally, the plaintiffs alleged that they had sought to remedy the unconstitutionality of which they complain through both the board and the Canaan board of selectmen. They alleged that these efforts were unsuccessful, that "the logical alternative forums have been exhausted and [that the] plaintiffs have no alternative but to turn to the courts to resolve the question."

The core of the plaintiffs' complaint, therefore, is as follows. First, the statutory formula set by § 10-51 (b), which requires each town to contribute to the district's educational expenses based on the per pupil cost of education — i.e., the total educational expenses of the district divided by the number of the town's resident students served thereby — deprives the plaintiffs, who are taxpayers of a relatively property tax poor town, of their state and federal constitutional rights to due process of law and equal protection of the laws. Second, the only way in which this unconstitutionality may be remedied is by making the district into a single taxing district for the purposes of education, with a uniform mill rate. The district would then assess each town an amount based, not on the per pupil cost of education, but on the value of the real property in that town — i.e., by multiplying the uniform mill rate by the total assessed value of the town's real property.

The plaintiffs claim that their complaint presents a justiciable claim. The defendant claims, to the contrary, that it does not and, by way of an alternate ground on which to affirm the trial court's judgment, that the plaintiffs lack

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multiplied by the total assessed value of the town's real property. Thus, under this formula, each town would contribute to the education of its students by the board according to the value of its real property. The wealthier the town, in terms of its taxable real property, the more it would contribute to the educational expenses of all of the students in the district, irrespective of the number of its students attending district schools each year.

standing. We conclude that: (1) the plaintiffs' claim is justiciable; and (2) the question of the plaintiffs' standing cannot be determined properly on the present record, and that an evidentiary hearing is necessary for that determination.

I

JUSTICIABILITY

We first note that, in deciding whether the complaint presents a justiciable claim, we make no determination regarding its merits. We do not consider, for example, whether it would survive a motion to strike on the ground that it does not state a valid cause of action for deprivation of the constitutional rights asserted, or whether it would survive a motion for summary judgment on the basis that the undisputed facts show that no such constitutional deprivations have occurred. We consider only whether "the matter in controversy [is] capable of being adjudicated by judicial power. . . ." *Nielsen* v. *State*, 236 Conn. 1, 6, 670 A.2d 1288 (1996).

"The principles that underlie justiciability are well established. Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant. . . . *State* v. *Nardini*, 187 Conn. 109, 111-12, 445 A.2d 304 (1982); *Pellegrino* v. *O Neill*, 193 Conn. 670, 674, 480 A.2d 476, cert. denied, 469 U.S. 875, 105 S. Ct. 236, 83 L. Ed. 2d 176 (1984). The third requirement for justiciability, [commonly referred to as] the political question doctrine, is based on the principle of separation of powers. *Nielsen* v. *Kezer*, 232 Conn. 65, 75, 652 A.2d 1013 (1995); *Pellegrino* v. *O'Neill*, supra, 680. The characterization of [an issue] as political is a convenient shorthand for declaring that some other branch of government has constitutional authority over

the subject matter superior to that of the courts. *Pellegrino* v. *O'Neill*, supra, 680. The fundamental characteristic of a political question, therefore, is that its adjudication would place the court in conflict with a coequal branch of government in violation of the primary authority of that coordinate branch. *Baker* v. *Carr*, [369 U.S. 186, 217, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962)]. *Nielsen* v. *Kezer*, supra, 74.

"Whether a controversy so directly implicates the primary authority of the legislative or executive branch, such that a court is not the proper forum for its resolution, is a determination that must be made on a case-by-case inquiry. Id., 74-75. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence. *Baker* v. *Carr*, supra, 369 U.S. 217; see *Fonfara* v. *Reapportionment Commission*, 222 Conn. 166, 184-85, 610 A.2d 153 (1992)." (Internal quotation marks omitted.) *Nielsen* v. *State*, supra, 236 Conn. 6-8. Furthermore, simply because the case has a "connection to the political sphere [is not] an independent basis for characterizing an issue as a 'political question'. . . ." *Board of Education* v. *Naugatuck*, 257 Conn. 409, 425, 778 A.2d 862 (2001).

In applying these standards to the plaintiffs' complaint, we first address the specific forms of relief that the plaintiffs seek. If we were to construe the complaint as requesting only that a court, having determined that the plaintiffs' constitutional claims are meritorious, order the district to establish itself as a taxing district, and set the taxing powers and standards suggested by the plaintiffs, we would have grave doubts about the justiciability of the claim, as the defendant suggests. In that case, it is very likely that the claim would fall within one or more of the categories of nonjusticiability.

We do not, however, view the plaintiffs' prayer for relief so narrowly. Although the plaintiffs do seek, in part, such an order from the court,[8] and although the text of the complaint presents such a remedy as the only way to vindicate the plaintiffs' rights, a separate prayer for relief is simply "[t]hat judgment be entered declaring that . . . § 10-51 (b) is unconstitutional on its face and as applied by [the board]." When a complaint is challenged by a motion to dismiss, we view its allegations in the light favorable to the pleader. See *Brookridge District Assn.* v. *Planning & Zoning Commission*, 259 Conn. 607, 681, 793 A.2d 215 (2002). We see no reason why the same principle should not apply to the prayer for relief. This latter prayer for relief is susceptible of an interpretation that would leave the formulation of the appropriate remedy to the legislative branch, rather than requiring the judicial branch to entangle itself in what probably would be the nonjudicial function of establishing a taxing district. Furthermore, there is precedent for this court, having determined that a particular legislative scheme is

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[8] The plaintiffs' third prayer for relief requests "[t]hat [the board] be directed to cease its present system of cost allocation among member towns, and be directed to reassess its education costs for current and future fiscal years so that the tax burden falls equally on all taxpayers in the region, in conformity with the constitutions of the State of Connecticut and of the United States. . . ."

unconstitutional, to leave the remedy to the legislative branch, at least initially. See, e.g., *Sheff* v. *O'Neill*, 238 Conn. 1, 678 A.2d 1267 (1996); *Horton* v. *Meskill*, 172 Conn. 615, 376 A.2d 359 (1977). We, therefore, consider the question of justiciability on the premise that the plaintiffs seek a declaration of the unconstitutionality of § 10-51 (b), with the remedy that they propose to be considered by the legislative branch. With this background in mind, we turn to the question of the justiciability of the complaint.

As *Nielsen* v. *State*, supra, 236 Conn. 7, teaches, there are essentially six circumstances in which a given issue may be characterized as a nonjusticiable political question, namely, where: (1) the text of the constitution demonstrates that the issue is committed to another branch of government; (2) there are no judicially discoverable and manageable standards for resolving the issue; (3) in order to decide the case, the court would be required to make an initial policy determination of the kind that clearly involves nonjudicial discretion; (4) the court would be required to express a lack of due respect to a coordinate branch of government; (5) there is an unusual need for unquestioning adherence to a preexisting political decision; or (6) there is a potential of embarrassment from multifarious pronouncements by various other governmental departments on one question. In order for any of these circumstances to apply, however, it must be "inextricable from the case at bar. . . ." (Internal quotation marks omitted.) Id., 8. If that inextricability is lacking, "there should be no dismissal for nonjusticiability on the ground of a political question's presence." (Internal quotation marks omitted.) Id.

On its face, the plaintiffs' complaint presents a straightforward claim that § 10-51 (b), facially and as applied, violates certain of their constitutional rights. We cannot conclude that any of the "political question" categories is inextricably linked to the present case.

There is no textual commitment of the question presented in this case, namely, whether the fiscal formula set forth by § 10-51 (b) violates the plaintiffs' rights to due process or equal protection, to any coordinate branch of government. Compare id., 9 (implementation of constitutional spending cap textually committed to general assembly). Although, of course, the manner in which any governmental function, educational or otherwise, is financed is generally a matter falling within the fiscal power of the legislative branch, that does not mean that the constitution textually commits to that branch any constitutional challenge to a particular system of financing.

There are easily discoverable and manageable judicial standards for determining the merits of the plaintiffs' claim. Those are the traditional standards for determining whether a statute meets the requirements of due process; see, e.g., *Packer* v. *Board of Education*, 246 Conn. 89, 106, 717 A.2d 117 (1998) (setting forth appropriate standard for deciding whether statute unconstitutionally vague and therefore violative of due process principles); or equal protection of the laws. See, e.g., *Donahue* v. *Southington*, 259 Conn. 783, 794, 792 A.2d 76 (2002); cf. *Board of Education* v. *Naugatuck*, supra, 257 Conn. 425 (in deciding question, court called upon to perform basic function of statutory interpretation).

Similarly, we cannot conclude that, in deciding the merits of the plaintiffs' constitutional claim, the courts would be inextricably involved in making an initial policy determination of a clearly nonjudicial, discretionary nature. Whenever a court engages in the process of determining whether a statute violates the constitution, matters of policy admittedly enter into the analysis. That does not mean, however, that, in applying the appropriate constitutional standards in the present case, we would be required to make some "initial policy determination of a kind clearly for nonjudicial discretion. . . ." *Nielsen* v. *State*, supra, 236 Conn. 7.

We see nothing in the plaintiffs' claim of unconstitutionality, moreover, that would, if we were to undertake to decide it or if it were found to be meritorious, involve the courts in expressing a lack of due respect for coordinate branches of government. Of course, deciding that a statute is unconstitutional, either on its face or as applied, is a delicate task in any event, and one that the courts perform only if convinced beyond a reasonable doubt of the statute's invalidity. See *Hammond* v. *Commissioner of Correction*, 259 Conn. 855, 876, 792 A.2d 774 (2002). That alone does not mean, however, that, if such a result must be reached on the facts and the law, such a declaration expresses lack of due respect for the legislative branch. Performing such a task simply exemplifies the fundamental judicial burden of determining whether a statute meets constitutional standards. See, e.g., *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803).

Finally, there are no multifarious pronouncements by other governmental departments on the question presented by the complaint. Thus, we need not determine whether any such pronouncements would produce potential embarrassment by undertaking to adjudicate the plaintiffs' claim.

The defendant argues, however, that, if the court were to adjudicate the plaintiffs' claim, it "would be 'expressing a lack of respect due a coordinate branch of government' . . . and [would be] improperly interfering with the 'need for unquestioning adherence to political decision[s] already made,' in violation of the mandates" set forth in *Nielsen* v. *State*, supra, 236 Conn. 7, and *Pellegrino* v. *O'Neill*, supra, 193 Conn. 670. (Citations omitted.) This argument is premised on the undisputed facts that: (1) the plaintiffs do not seek to vindicate students' state fundamental constitutional right to education; compare *Horton* v. *Meskill*, supra, 172 Conn. 615; but rather to vindicate their constitutional rights as taxpayers; (2) there is a legislatively provided procedure by which the

taxpayers of Canaan may withdraw from the district; see General Statutes § 10-63a et seq.; and (3) the plaintiffs may seek to have their town avail itself of that process, which would "[involve], however, convincing [their] fellow electors, rather than a single jurist." We are not persuaded that these considerations render this claim nonjusticiable.

First, this analysis suggests, without explicitly saying so, that the coordinate branch of government to which due respect is owed is the legislative body of Canaan, because that is the body that, presumably, has chosen to join and remain in the district. We do not think that a local legislative body is what is meant by a "coordinate branch of government" in the context of the nonjusticiability doctrine; *Nielsen* v. *State*, supra, 236 Conn. 7; because local legislative bodies, unlike the General Assembly, are not branches of government coordinate with the judicial branch. To the extent, moreover, that the defendant refers, instead, to the state legislature, which enacted § 10-51 (b), as that coordinate branch of government, we reject that argument as rendering the issue presently before us nonjusticiable. Simply because the legislature has passed a statute adopting a particular fiscal formula cannot mean that a court may not entertain a constitutional challenge to that formula.

Second, although it is true that Canaan joined and could withdraw from the district through its own internal political processes, that is insufficient to invoke the strand of nonjusticiability jurisprudence that rests on the "unusual need for unquestioning adherence to a political decision already made. . . ." Id. Courts sit to entertain claims based on alleged violations of constitutional rights and, if those claims are meritorious, to vindicate those rights by appropriate declarations and, if necessary, remedies. Unless the "unusual need" for such "unquestioning adherence" to a preexisting political

decision is inextricable from the claim, "there should be no dismissal for nonjusticiability on the ground of a political [question]. . . ." Id., 7-8.

Thus, whatever that strand may mean in any given context, one thing that it must mean, at the least, is that the pre-existing political decision is of such a politically significant or sensitive nature that there is an unusual need for unquestioned adherence to it, despite the fact that the statute embodying that decision may be invalidated by the challenge to it in question. Only such a basic meaning would justify the court abjuring its traditional role of entertaining such challenges. Put another way, the principle that a case should not be dismissed for nonjusticiability as a political question unless an unusual need for unquestioned adherence to that decision is inextricable from the case, means that courts should view such cases with a heavy thumb on the side of justiciability, and with the recognition that, simply because the case is connected to the political sphere, it does not necessarily follow that it is a political question. *Board of Education* v. *Naugatuck*, supra, 257 Conn. 425.

Canaan's local political decision to remain in the district under the statutory formula being challenged by the plaintiffs is not such a decision. We simply fail to see the unusual need for unquestioning adherence to that decision, in the face of the plaintiffs' claim that the formula is in violation of their constitutional rights.

II

STANDING

As an alternate ground on which to affirm the judgment of dismissal, the defendant claims that the plaintiffs have not established standing as taxpayers. Specifically, the defendant asserts that: (1) under *Sadloski* v. *Manchester*, 235 Conn. 637, 646-50, 668 A.2d 1314 (1995), the entire fiscal picture

must be taken into account in determining whether a taxpayer, challenging a particular program, has been harmed thereby; and (2) the inequalities of which the plaintiffs complain have been addressed and remedied by General Statutes §§ 10-262f through 10-262j, the educational cost sharing formula, which is specifically designed to address inequalities of wealth among the towns in the state. We agree that this question is controlled by our decision in *Sadloski*. We also conclude, however, that this record presents an insufficient basis on which we confidently can determine the question of standing pursuant to that decision.

In *Sadloski*, we reaffirmed the basic tenets of taxpayer standing. "The plaintiff's status as a taxpayer does not automatically give her standing to challenge alleged improprieties in the conduct of the defendant town. *Alarm Applications Co.* v. *Simsbury Volunteer Fire Co.*, 179 Conn. 541, 549, 427 A.2d 822 (1980); *Bell* v. *Planning & Zoning Commission*, 174 Conn. 493, 497-98, 391 A.2d 154 (1978); *Belford* v. *New Haven*, 170 Conn. 46, 52-53, 364 A.2d 194 (1975). . . . The plaintiff must also allege and demonstrate that the allegedly improper municipal conduct cause[d her] to suffer some pecuniary or other great injury. . . . *Alarm Applications Co.* v. *Simsbury Volunteer Fire Co.*, supra [549]; *Belford* v. *New Haven*, supra, 53; *Atwood* v. *Regional School District No. 15*, 169 Conn. 613, 617, 363 A.2d 1038 (1975); *Bassett* v. *Desmond*, 140 Conn. 426, 430, 101 A.2d 294 (1953). . . . It is not enough for the plaintiff to show that her tax dollars have contributed to the challenged project; *Bell* v. *Planning & Zoning Commission*, supra, 498 . . . the plaintiff must prove that the project has directly or indirectly increased her taxes; *Atwood* v. *Regional School District No. 15*, supra, 617; or, in some other fashion, caused her irreparable injury in her capacity as a taxpayer. *Bassett* v. *Desmond*, supra [430]; *Cassidy* v. *Waterbury*, 130 Conn. 237, 245, 33 A.2d 142 (1943)." (Internal quotation marks omitted.) *Sadloski* v. *Manchester*, supra, 235 Conn. 647. We then held, in effect,

that, because standing is a practical concept, common sense suggests that a taxpayer who challenges a part of a particular governmental program must demonstrate his or her injury in the entire fiscal context of that program, taking into account both the burdens and benefits of the program, and not just by demonstrating that the presumably burdensome part of the program itself, divorced from the larger program of which it is a part, causes injury. Id., 648.

The defendant does not challenge, for standing purposes, the sufficiency of the plaintiffs' allegation that the tax burdens on the plaintiffs and other taxpayers in Canaan for educating their students is substantially greater than the equivalent cost to taxpayers in every other member town in the district except for North Canaan. This presumably satisfies the pleading requirement that a taxpayer allege that the challenged statute "in some . . . fashion, [other than a simple increase in taxes] caused her irreparable injury in her capacity as a taxpayer." (Internal quotation marks omitted.) Id., 647. The defendant submits, instead, that, as a legal matter, the formula set forth in § 10-51 (b) must be evaluated in light of the equalization formulas set forth in the educational cost sharing statutes, and as a factual matter, those formulas demonstrate that the plaintiffs have not in fact suffered the injury of which they complain sufficiently to demonstrate their standing as taxpayers.[9]

---

[9] The defendant also asserted, at oral argument before this court, that implicit in the question of the plaintiffs' standing is the fact that, by Canaan remaining in the district, it is relieved of the obligation of constructing its own high school, and that, therefore, the plaintiffs cannot establish taxpayer harm, considering the alternative. We need not address that assertion, which would require a factual basis. The defendant is free to present it to the trial court in the evidentiary hearing following our remand.

We cannot confidently make that determination on the state of the present record. In *Sadloski*, there had been a full evidentiary trial that focused, at least in part, on whether the taxpayer plaintiff had been harmed, in an overall sense, by the specific tax abatement that she challenged. Id., 641. The trial court, moreover, found that the assessed value of the property in question after the challenged abatement was tens of millions of dollars more than before the project. Id., 642. On the basis of that finding, and on the fact that the record disclosed that the challenged tax abatement produced an overall net financial tax benefit to the town, we were able to conclude with confidence that the plaintiff had not established her claimed taxpayer standing. Id., 650.

There has been no such hearing and no such finding in the present case, and the record does not establish with any certainty just how the educational cost sharing formula may remedy the taxpayer harm alleged by the plaintiffs. It may well be that, as the defendant contends, the educational cost sharing formula is sufficiently closely allied with the formula set forth in § 10-51 (b) that its benefits must be taken into account, and that those benefits, overall, sufficiently compensate for the taxpayer harm claimed by the plaintiffs. Such findings, however, cannot be reached on the present record. An evidentiary hearing is therefore required.

The judgment is reversed and the case is remanded to the trial court for a hearing on the question of the plaintiffs' standing as taxpayers, and for further proceedings according to law.

In this opinion the other justices concurred.

SEYMOUR, GABRIEL VS.
REGION ONE BOARD CV-00-0082467-S

MOTION # 132 - ORDER

THE FOREGOING MOTION HAVING BEEN HEARD, IT IS HEREBY ORDERED: DENIED. PARTIES TO PROCEED WITH DEPOSITIONS AND TO DISCLOSE TAX RETURNS. FOR LIMITED PURPOSE OF PROCEEDING WITH THE DEPOSITION THE TAX RETURNS ARE TO BE SEALED. SAID ORDER SUBJECT TO ARGUMENT AT LATER DATE. (TRANSCRIPT ORDERED.)

BY THE COURT (BLACK, J.) 02-03-2003

SUPERIOR COURT
15 WEST STREET
P.O. BOX 247
LITCHFIELD, CT 06759

FURNISS & QUINN
248 HUDSON STREET
HARTFORD, CT 06106

DATED: FEB 04, 2003
LLI

RECEIVED FEB 10 2003

NO. CV00-0082467-S

GABRIEL SEYMOUR, and JOYCE SCHURK,	:	SUPERIOR COURT
Plaintiffs,	:	JUDICIAL DISTRICT OF LITCHFIELD
REGION ONE BOARD OF EDUCATION and RICHARD BLUMENTHAL, ATTORNEY GENERAL	:	AT LITCHFIELD
Defendants.	:	FEBRUARY 27, 2003

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO UNSEALING OF TAX RETURNS OR PUBLIC QUESTIONING ABOUT THEIR PERSONAL FINANCES

ARGUMENT

REQUIRING TAXPAYERS TO DISCLOSE CONFIDENTIAL PERSONAL INCOME TAX INFORMATION IN ORDER TO ESTABLISH STANDING IN TAXPAYERS' ACTIONS WILL HAVE A CHILLING EFFECT ON ACCESS TO THE COURTS

1. The constitutional right of access to the courts is at its strongest when it protects suits such as taxpayer actions that challenge government policies.

The United States Supreme Court has repeatedly held that the right of access to the courts is protected under the First Amendment of the United States Constitution. *See e.g. Harrison v. St. Louis & S. F. R. Co.*, 232 U.S. 318, 332 (1914), *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972), *In re Primus*, 436 U.S. 412, 426 (1978), *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983), *BE&K Constr. Co. v. NLRB*, 122

S. Ct. 2390, 2396 (2002). Recently a Connecticut Superior Court confirmed that the Connecticut Constitution recognizes a similar right:

> Article first, § 10 of the constitution of Connecticut provides that "all courts shall be open, and every person for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale denial or delay." "Thus does the First Amendment to the U.S. Constitution grant the right of free access to the courts for the remediation of civil wrongs and Section 10 of Article First of the State Constitution confers a similar right." *Connecticut National Bank v. Mase*, 1991 Conn. Super. LEXIS 364, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 269180 (Jan. 31, 1991) (Flynn, J.) (3 Conn. L. Rptr. 285). *New Milford Sav. Bank v. Jaier*, 2000 Conn. Super. LEXIS 3619, 12, Superior Court, Judicial District of Litchfield.

The Supreme Court has explained that "the right of access to the courts is . . . but one aspect of the right of petition" guaranteed by the First Amendment. *California Motor Transport Co.* 404 U.S. at 510. As such, the right is most squarely implicated when litigants "use . . . courts to advocate their causes and points of view." *BE&K Constr. Co. v. NLRB*, 122 S. Ct. at 2396 (quoting *California Motor Transport Co.* 404 U.S. at 510.) *See also NAACP v. Button* 371 U.S. 415 (1963), *In re Primus*, 436 U.S. 412, 426 (1978). Following from the "same philosophy" that protects political protest directed at other branches of the government, *California Motor Transport Co.* 404 U.S. at 510, the federal constitutional right to access to the courts is at its strongest when it protects litigation, such as taxpayer actions, aimed at challenging government policies.

2. Compelled disclosure of information has a chilling effect on First Amendment rights, including access to the courts.

The Supreme Court "has found in a number of cases that constitutional violations may arise from the deterrent, or "chilling," effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights." *Laird v. Tatum*, 408 U.S. 1, 11(1972) (*citing, e.g. Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *Kevishian v. Board of Regents*, 385 U.S. 589 (1967); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); *Baggett v. Bullitt*, 377 U.S. 360 (1964)).

Compelled disclosure of information has been found to be one such chilling regulation. The Supreme Court has "repeatedly found that compelled disclosure . . . can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64 (1977) (*citing, e.g., Gibson v. Florida Legislative Comm.*, 372 U.S. 539 (1963); *NAACP v. Button*, 371 U.S. 415 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958)). "Significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP v. Alabama* we have required that the subordinating interests of the State must survive exacting scrutiny . . . This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." *Buckley*, 424 U.S. at 64 (citing *NAACP v. Alabama*, 357 U.S. at 461.)

The right of access to the courts is one of the First Amendment rights protected from the chilling effect of compelled information disclosure. Several federal courts, including the District Court of Connecticut, have found that the opening of legal mail violates the access rights of prison inmates:

> Opening legal mail outside of an inmate's presence "'effectively chills access to a governmental entity that is intimately related to the administration of justice,' *Muhammad v. Pitcher*, 35 F.3d 1081, 1083-84 (6th Cir. 1994) (quoting *Stover v. Carlson*, 413 F. Supp. 718, 723 (D.Conn. 1976)), and the chilling effect on one's constitutional rights constitutes a present injury in fact. See id. at 1084. *McFarland v. Luttrell*, 1995 U.S. App. LEXIS 7871, 9 (6th Cir. 1995).
>
> When mail from any court is opened outside the presence of the inmate, and the inmate knows that such mail may be read by prison officials, the 'chilling effect' on the right of access to the courts is substantial." 413 F. Supp. at 722. The motivation of prison officials is irrelevant, i.e., "it is the fact of the opening outside the inmate's presence, not the official's motivation, that deters effective access to the courts." Id. at 721. The court also pointed out that the danger that legal mail which bears the name and return address of the sender may contain contraband is minimal and does not justify the general opening of such mail outside the presence of the addressee. Id. at 722. Thus, the court concluded that opening legal mail outside the presence of the prisoner "furthers no substantial governmental interest of security, order, or rehabilitation while limiting Sixth Amendment freedoms significantly." Id. Legal mail, therefore, "must he opened only in the presence of the inmate." Id. n3. *Thornley v. Edwards*, 671 F. Supp. 339, 341 (M.D. Penn. 1987).

3. <u>The presumption against compelling disclosure of tax returns is further strengthened by a public policy of tax return confidentiality.</u>

Federal and state statutes alike protect the confidentiality of federal income tax returns. *I.R.C.* § 6103. *Conn. Gen. Stat.* § 1-19 (b). While neither the Supreme Court of the United States nor Connecticut state courts have ruled directly on the matter, numerous federal courts have extended this protection to the discovery process. *See, e.g. Poulos v. NAAS Foods*, 959 F.2d 69, 74-75 (7th Cir. 1992); *Premium Serv. Coro. v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir. 1975) (holding that tax returns may not be discovered in antitrust suit); *Federal Sav. & Loan Ins. Corp. v. Krueger*, 55 F.R.D. 512, 514 (N.D. Ill. 1972) (determining that tax returns may not be discovered where not made an issue). *Payne v. Howard*, 75 F.R.D. 465, (D. D.C. 977). (holding that I.R.C. section 6103 should be broadly construed to further a policy of preventing indiscriminate disclosure of income). *Federal Sav. & Loan Ins. Corp.* 55 F.R.D. at 514 (N.D. Ili. 1972), presents a typical rationale for such a policy:

> The court recognizes that the statutes cited do not provide for absolute privilege of returns even in the hands of the government . . . However, it is the opinion of this court that the statutes cited reflect a valid public policy against disclosure of income tax returns. This policy is grounded in the interest of the government in full disclosure of all the taxpayer's income which thereby maximizes revenue. To indiscriminately compel a taxpayer to disclose this information merely because he has become a party to a lawsuit would undermine this policy. . . . Although many district courts have addressed themselves to this issue there is a paucity of opinions directly in point from Courts of Appeals and the Supreme Court. After a complete review of the cases it is the opinion of this court that the case of

Kingsley v. Delaware, Lackawanna & Western R. Co., supra, represents the best view. In that case the court carefully reviewed the authorities and came to the conclusion that the tax returns were subject to discovery only "where a litigant himself tenders an issue as to the amount of his income".

PLAINTIFFS,

By: /s/ _____

Peter L. Truebner.
Their Attorney
100 Prospect Street, South Tower
Stamford, CT 06901

Grateful acknowledgment is given to Yale Law School Legal Services for assistance in the preparation of this memorandum, and especially to Aron Fischer, its principal author.

NO. CV00-0082467-S

GABRIEL SEYMOUR, and JOYCE SCHURK,	:	SUPERIOR COURT
Plaintiffs,	:	JUDICIAL DISTRICT OF LITCHFIELD
REGION ONE BOARD OF EDUCATION and RICHARD BLUMENTHAL, ATTORNEY GENERAL	:	AT LITCHFIELD
Defendants.	:	APRIL 16, 2003

PLAINTIFFS' POST-HEARING MEMORANDUM

POINT VI

PLAINTIFFS' FIRST AMENDMENT RIGHTS HAVE BEEN REPEATEDLY VIOLATED BY DEFENDANT BLUMENTHAL IN THIS PROCEEDING BY HIS AGGRESSIVE DEMANDS FOR PERSONAL TAX RETURNS AND HIS VIOLATION OF THE SUPERIOR COURT'S SEALING ORDER DURING HIGHLY PUBLICIZED COURT PROCEEDINGS

The entire course of these proceedings has been marred by official abuse of citizen constitutional rights by Connecticut's highest legal officer. The issue to be decided by the evidentiary hearing was defined by the Supreme Court in its opinion remanding the case to the Superior Court in August, 2002 (*supra,* pp. 1-2). Instead of preparing and conducting such a hearing in a dignified, professional manner on the merits, the Assistant Attorney General used the opportunity to gain personal publicity and to publicly humiliate and punish the taxpayer plaintiffs. The harassing tactics employed by the Attorney General's office have included:

1. Inflammatory personal remarks in court papers and in open Court in connection with demands for production of plaintiffs' individual federal and state income tax returns. These remarks were then prominently printed in local newspapers demonstrating to plaintiffs that their private financial affairs would also be used to humiliate and embarrass the taxpayer plaintiffs — a strategy that ultimately forced three of the plaintiffs to withdraw. (See statements of withdrawal filed with the Court by former plaintiffs Coolidge, Jenks and Dempsey, and the copies of accompanying newspaper coverage.)

2. Selective income tax return disclosures targeting of four of the five taxpayer plaintiffs for deliberately omitting the fifth taxpayer plaintiff, Joyce Schurk, from those discovery demands. It is self-evident that if the Attorney General believed that financial "wherewithal" was relevant to the plaintiffs' standing, then such evidence as to the "wherewithal" was required of *all* plaintiffs. However, Mrs. Schurk is a long-time Canaan resident, recently widowed, who lives modestly on limited means and "wherewithal." Mrs. Schurk would therefore continue as a plaintiff even if the other four targeted plaintiffs were disqualified because of higher "wherewithal." The Attorney General's highly publicized demands for their personal tax returns from only four of the five plaintiffs was plainly done for the ulterior purpose of forcing their withdrawal.

3. Efforts to discourage these plaintiffs and other citizens from petitioning Connecticut Courts for declaratory judgment on important public issues. Three of the original plaintiffs hold or formerly held elected local town offices in the Town of Canaan. It is apparent to any objective person that their object in bringing this declaratory judgment action was not out of financial self-interest. The amount of taxes that will be saved by the individual plaintiffs if the case is successful is far exceeded by the out-of-pocket costs incurred in bringing

and prosecuting this case. The plaintiffs' obvious goal was to remedy a public wrong for the benefit of their town and its residents. The conduct of the Attorney General in his harassing and punitive tactics against these public-spirited citizens has been totally unjustifiable.

The First Amendment to the U.S. Constitution and Article First, Section 10 of the Connecticut Constitution both guarantee citizens a right of access to the courts. The courts have repeatedly recognized that compelling disclosure of personal financial information from citizens has a "chilling effect" on First Amendment rights. *See Buckley v. Valeo*, 424 U.S. 1, 64 (1977) (*citing e.g. Gibson v. Florida Legislative Comm.* 372 U.S. 539 (1963); *NAACP v. Button*, 371 U.S. 425 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (158).

> "Significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest."
>
> *Buckley*, 424 U.S. at 64 (citing *NAACP v. Alabama*, 357 U.S. at 461.)

The forced disclosure of detailed personal financial information constitutes a violation of their constitutional rights by discouraging them (and other citizens) from seeking court relief. Such violation of constitutional rights has tainted the Attorney General's motion to dismiss and warrants denial of the motion on the basis of that conduct alone.

* * *

DOCKET NO: CV 00 0082467S	:	SUPERIOR COURT
GABRIEL SEYMOUR AND JOYCE SCHURK	:	JUDICIAL DISTRICT OF LITCHFIELD
V.	:	AT LITCHFIELD
REGION ONE BOARD OF EDUCATION, AND RICHARD BLUMENTHAL, ATTORNEY GENERAL	:	MAY 28, 2003

OFFICE OF THE CLERK
SUPERIOR COURT
MAY 28 1 57 PM '03
JUDICIAL DISTRICT OF LITCHFIELD
STATE OF CONNECTICUT

MEMORANDUM OF DECISION

Background

On August 20, 2002, the Supreme Court of the State of Connecticut directed this court to conduct an evidentiary hearing to determine whether the plaintiff taxpayers have suffered injury sufficient to confer standing to challenge the constitutionality of Conn. Gen. Stat. §10-51(b) and/or in the alternative whether the educational cost sharing formula and its benefits sufficiently compensate for any taxpayer harm claimed by the plaintiffs. *Seymour v. Region One*, 261 Conn. 475 (2002). On February 27, 2003, the court held an evidentiary hearing to meet the mandate of the Supreme Court. At the conclusion of the hearing, the court ordered briefs to be filed by all parties due three weeks after receipt of the transcript of the hearing.

Briefs were filed on April 16, 2003. On April 17, 2003, the defendant Town of Canaan filed a "Motion for Order" arguing that certain portions of the plaintiff's brief contain

improper material and as such should be stricken. The defendant Attorney General, the defendant Town of Salisbury and the defendant Region One Board of Education filed Memoranda in support of the defendant Town of Canaan's Motion for Order. The Court heard argument by all parties on said motion on May 15, 2003. At said hearing, the Court reasoned that pursuant to the practice book it could not "strike" improper material. It could however disregard said material. All counsel agreed that this would be the proper procedure.

Discussion

The Court considers the following alleged improper material in the plaintiffs' Post-Hearing Memorandum as argued in the defendant Town of Canaan's Motion for Order:

a) Quotations and references to material not in evidence in the hearing, including statements of one Suzanne Gleason, quoted at length (pp. 3 and 4), and quotations from a document not in evidence as an exhibit. (C2 at page 3.) These quotations and documents were not admitted into evidence at the hearing and are therefore disregarded.

b) Plaintiffs' brief reargues the court's ruling excluding from evidence documents C1-C5 (for identification only). The plaintiffs failed to file a Motion to Reargue, a Motion for Reconsideration, or any other appropriate motion regarding this issue. The court should note that a Motion to Reargue under Section 11-12 needs to be filed within 20 days from the issuance of the decision or order, and twenty days have long passed. (Pages 7-9.) The court has previously excluded these documents from evidence. C1-C5 were marked for identification purposes only. Transcript page 84. This is the law of the case.

c) Plaintiffs' brief makes extended reference to issues that have already been decided by the court regarding

the taking of evidence and disclosure of financial documents. These decisions were made by the court after extended opportunity for argument. Again these issues are argued without filing a Motion to Reargue. (Pp. 12-15.) The Court considers said material to be argument rather than substantive. The Court has previously ruled on said matters. The rulings stand.

d) Plaintiffs argue that certain questions were improper as being based on a deposition. Plaintiffs cite various sections of the cross examination. Plaintiffs never objected on the bases that the questions were a violation of the court's order sealing the deposition. Now plaintiffs wish to argue the point again without any further motions or request and without having raised the issue initially.

The Court has previously ruled in the evidentiary hearing as to the appropriateness of the Attorney General's questioning of Ms. Seymour. The questioning was directly related to the pecuniary interest of the plaintiff. There was no violation of the sealing order as such was limited to the deposition. The Court never intended that such testimony would be excluded from an evidentiary hearing relating to the pecuniary harm alleged to have been suffered by the plaintiff. Indeed, when the Court considered the questioning to be improper, it so ruled. Transcript p. 96.

2. Plaintiff has inappropriately annexed photocopies labeled Appendix A and Appendix B which were not admitted at the hearing, which consist of post-hearing newspaper clippings, and which clearly constitute hearsay.

These articles are not in evidence and should be disregarded.

So ordered.

THE COURT

Black, J.

NO. CV00-0082467-S	:	SUPERIOR COURT
GABRIEL SEYMOUR, and JOYCE SCHURK,	:	JUDICIAL DISTRICT OF LITCHFIELD
Plaintiffs,	:	AT LITCHFIELD
v.		
REGION ONE BOARD OF EDUCATION and RICHARD BLUMENTHAL, ATTORNEY GENERAL		
Defendants.	:	June 2, 2003

MOTION TO SUPPRESS

Based on the annexed notice from intervenor Town of Canaan dated May 21, 2003, marked as Exhibit A, and the annexed newspaper articles from area and local media dated May 25 and 29, 2003, marked as Exhibits B and C, and on all prior proceedings herein, plaintiffs move to suppress and strike all evidence relating to Plaintiff Seymour's personal finances elicited by the Attorney General during discovery and public questioning at the evidentiary hearing herein, on the ground that the public disclosure of such evidence violates plaintiffs' First and Fourteenth Amendment and Connecticut State Constitutional right of access to the courts and to petition the Government for a redress of grievances. This motion is made under the same principles of justice as a motion to suppress evidence in criminal matters under Superior Court Rule 41-12.

NEITHER ORAL ARGUMENT
NOR TESTIMONY IS REQUIRED

Plaintiffs rely on the Memorandum of Law filed at the outset of the evidentiary hearing herein for a detailed statement of legal grounds in support of this motion.

Respectfully submitted,
PLAINTIFFS

By_____

Peter L. Truebner.
Their Attorney
100 Prospect Street, South Tower
Stamford, CT 06901
(203)323-4540

DOCKET NO: CV 00 0082467S	:	SUPERIOR COURT
GABRIEL SEYMOUR AND JOYCE SCHURK	:	JUDICIAL DISTRICT OF LITCHFIELD
V.	:	AT LITCHFIELD
REGION ONE BOARD OF EDUCATION, AND RICHARD BLUMENTHAL, ATTORNEY GENERAL	:	SEPTEMBER 22, 2003

OFFICE OF THE CLERK
SUPERIOR COURT
SEP 23 12 33 PM '03
JUDICIAL DISTRICT OF LITCHFIELD
STATE OF CONNECTICUT

MEMORANDUM OF DECISION

Background

On August 20, 2002, the Supreme Court of the State of Connecticut directed this court to conduct an evidentiary hearing to determine whether the plaintiff taxpayers have suffered injury sufficient to confer standing to challenge the constitutionality of Conn. Gen Stat. §10-51(b) and/or in the alternative whether the educational cost sharing formula and its benefits sufficiently compensate for any taxpayer harm claimed by the plaintiffs. *Seymour v. Region One*, 261 Conn. 475 (2002). On February 27, 2003, the court held an evidentiary hearing to meet the mandate of the Supreme Court. At the conclusion of the hearing, the court ordered briefs to be filed by all parties due three weeks after receipt of the transcript of the hearing.

Briefs were filed on April 16, 2003. On April 17, 2003, the defendant Town of Canaan filed a "Motion for Order" arguing that certain portions of the plaintiff's brief contain

improper material and as such should be stricken. The defendant Attorney General, the defendant Town of Salisbury and the defendant Region One Board of Education filed Memoranda in support of the defendant Town of Canaan's Motion for Order. The Court heard argument by all parties on said motion on May 15, 2003. At said hearing, the Court reasoned that pursuant to the practice book it could not "strike" improper material. It could however disregard said material. All counsel agreed that this would be the proper procedure. On May 28, 2003, the Court issued a Memorandum of Decision on the Motion for Order and *again* ruled that certain materials contained in the Plaintiff's Past Hearing Memorandum were improperly included in said memorandum as such were improperly included in said memorandum as such were previously excluded from evidence at the hearing after full argument. The Court further noted that plaintiff's counsel failed to file any motions to reargue or motion for reconsideration within the time mandated by Conn. Practice Book Section 11-12. The Court then again ruled on the appropriateness of the Attorney General's questioning of Ms. Seymour and further ordered that photocopies annexed to the plaintiff's brief be disregarded as not being admitted into evidence. The Plaintiff then filed a Motion to Suppress that was denied.

Law

The first issue to be addressed in this case is whether the Plaintiffs Gabriel Seymour and Joyce Schurk have established standing under *Sadloski v. Manchester*, 235 Conn. 637, 646-50 (1995), the case recognized as controlling by the Connecticut Supreme Court in its remand in *Seymour v. Region One Board of Education*, 261 Conn. 475, 489 (2002).

In *Seymour*, the Connecticut Supreme Court acknowledged that it reaffirmed the basic tenets of taxpayer standing in *Sadloski* (*supra*). *Seymour, supra* at 489. The Plaintiff's status

as a taxpayer alone however does not automatically confer standing.

> . . . The plaintiff must also allege and demonstrate that the allegedly improper municipal conduct cause[d her] *to suffer some pecuniary or other great injury . . . Alarm Applications Co. v. Simsbury Volunteer Fire Co., supra* [549]; *Belford v. New Haven, supra*, 53; *Atwood v. Regional School District No. 15*, 169 Conn. 613, 617, 363 A.2d 1038 (1975); *Bassett v. Desmond*, 140 Conn. 426, 430, 101 A.2d 294 (1953) . . . It is not enough for the plaintiff to show that her tax dollars have contributed to the challenged project; *Bell v. Planning & Zoning Commission, supra*, 498 The plaintiff must prove that the project *has directly or indirectly increased her taxes*; *Atwood v. Regional School District No. 15, supra*, 617; or, in some other fashion, caused her irreparable injury in her capacity as a taxpayer. *Basset v. Desmond, supra* [430]; *Cassidy v. Waterbury*, 130 Conn. 237, 245, 33 A.2d 142 (1943)." (Internal quotation marks omitted.) *Sadloski v. Manchester, supra*, 235 Conn. 647. We then held, in effect, that, because standing is a practical concept, common sense suggests that a taxpayer who challenges a part of a particular governmental program must demonstrate his or her injury in the entire *fiscal context of that program, taking into account both the burdens and benefits of the program*, and not just by demonstrating that the presumably burdensome part of the program itself divorced from the larger program of which it is a part, causes injury. *Id.*, 468. (Emphasis added.)

Seymour, 261 Conn. at 490.

The *Seymour* Court further observed that:

> The defendant does not challenge, for standing purposes, the sufficiency of the plaintiff's allegation that the tax

> burdens on the plaintiffs and other taxpayers in Canaan for educating their students is substantially greater than the equivalent cost to taxpayers in every other member town in the district except for North Canaan. This presumably satisfies the pleading requirement that a taxpayer allege that the challenged statute "in some . . . fashion, [other than a simple increase in taxes] caused her irreparable injury in her capacity as a taxpayer." (Internal quotation marks omitted.) *Id.*, 647. The defendant submits, instead, that as a legal matter, the formula set forth in §10-51(b) must be evaluated in light of the equalization formulas set forth in the educational cost sharing statutes, and as a factual matter, those formulas demonstrate that the plaintiffs have not in fact suffered the injury of which they complain sufficiently to demonstrate their standing as taxpayers.

Seymour, 261 Conn. at 490-91 (footnote omitted). The *Seymour* Court concluded that unlike *Sadloski* there had been no full evidentiary hearing to make the determination whether the taxpayer suffered harm and whether the educational cost sharing statutes (hereinafter ECS) may remedy any alleged taxpayer harm. The Court remanded the case to this Court for an evidentiary hearing on standing as well as a determination of the benefits of the ECS to compensate for taxpayer harm claimed by the plaintiffs. *Seymour*, 261 Conn. at 491-91.

To decide whether the plaintiffs have standing, the Court must examine the record to determine whether the plaintiffs have suffered any pecuniary or other great injury; whether the formula in Conn. Gen. Stat. §10-51(b) directly or indirectly increased their taxes or caused them great injury. This examination must occur within the entire fiscal context taking into account the burdens and benefits of ECS. *Seymour*, 261 Conn. at 491. For the reasons stated below, the Court finds that neither plaintiff has established standing.

Discussion

At the evidentiary hearing on February 27, 2003, the movant Attorney General produced two witnesses. The first, Ms. Lauren Elliott qualified as an expert witness without objection. (Transcript, 2/27/02 at page 10; hereinafter "T.10.") Ms. Elliott testified that she has been a tax assessor for seventeen years in various towns in the State of Connecticut as well as in Massachusetts and New Hampshire. (T.6.) She is presently the assessor for the Town of Canaan. (T.7.) She is experienced in property reevaluations for the purposes of assessing property taxes. (T.7.) Her own evaluation company has conducted reevaluations in the Towns comprising Region One Board of Education, specifically Salisbury, in 2000; Sharon and Kent in 1999, Cornwall, 2001; the revaluation in Canaan in 1998 and as the Town Assessor, she performed the revaluation in Canaan in 2002. (T.8.) Ms. Elliott is a certified assessor for the State of Connecticut. (T.9.) She is also certified by the Office of Policy and Management to do revaluation work. (T.9.) She has testified as an expert witness concerning assessments in the Courts of the State of Connecticut. (T.10.) She is familiar with the properties in the Town of Canaan. (T.11.)

Ms. Elliott proceeded to testify about the plaintiffs' properties in the Town of Canaan and their respective taxes. (T.11-21, Exhibit 2-6.) Ms Seymour owns two properties in Canaan, one parcel comprised of 6.05 acres containing her residence and an adjacent unimproved parcel comprised of 4.11 acres. The assessed value[1] of the first parcel is $103,100. The assessed value of the second parcel is

[1] The assessment is based on the 1998 revaluation. The current 2002 revaluation was just completed prior to the hearing and had yet to be signed by Ms. Elliott. (T. pp 12-13.)

$28,200.[2] (Ex. 2.) Ms. Seymour pays a tax of $3,221.88 on the first parcel and a tax of $881.25 on the second parcel. The tax rate is 31.25 (mils) of the assessed value. (T.18.) (Ex. 4.)

The plaintiff Joyce Schurk owns property in the Town of Canaan comprised of 1.74 acres containing a house and outbuildings. (T.16.) The assessed value is $70,800. (T.17.) The tax on the property allowing for a $1,500 veteran's exemption thereby reducing their assessed taxable value to $69,300 is $2,165.63. (T.19, Ex. 5.) Ms. Elliott further testified that the mill rate in Canaan has remained essentially the same from the 1998 assessment to the current tax year. (T.20.)

In addition Ms. Elliott prepared a property tax analysis for the hearing utilizing CAMA systems, that is, Computerized Assisted Mass Appraisal. (T.22, Ex. 6.) This computerized tax analysis inputs the characteristics of the plaintiffs' properties utilizing information from their respective tax assessor's cards from the Town of Canaan. The purpose of this analysis was to determine what each plaintiffs' assessment and tax liability would be for each town located within Region One Board of Education. (T. 20-23.) The conclusion reached by such analysis was that the assessment of the Seymour property and the Schurk property in any of the corresponding towns in Litchfield would result in the same approximate tax. (T.27-28.) Further, Ms. Elliott testified that the grand list in Canaan had increased by approximately 30 per cent. She believed that if municipal spending remained constant the mill rate would decrease by one third. (T.28.)

The Attorney General offered as his next and last witness Mr. Robert Brewer, the manager of the Division of Grants for the State of Connecticut Department of Education. (T.32.) Mr. Brewer testified that he had worked for that department for thirty-three years, the last fifteen in the capacity of manager.

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[2] The mill rate is against the assessed values. (T.15.)

(T.32.) In particular, Mr. Brewer outlined the working and purpose of the educational cost sharing grant (ECS). (T.33.) The ECS is an equalization grant. Its purpose is to "recognize the various abilities of the 169 towns in the State of Connecticut to raise funds to pay for education and to distribute the State's share, which in this case is about $1.5 billion in a proportion that's inverse to the town's ability to pay. So that a wealthier community would receive less support from the State, a needier community would receive additional funds." (T.33-34.)

The ECS grant formula is based on three pieces; the foundation, that is, the amount of money the State allocates per student per year, currently just under $5,900.00; the number of students within the town adjusted for factors such as poverty, academic performance, limited English proficiency and finally, the relative ability of the towns to pay based on their property wealth. (T.34.) The ECS has its own definition of property wealth based on an equalized net grand list (ENGL) which considers and factors into the equation the equalized grand list of the town, per capita income and median household income. (T.34, 37.) Once calculated the ECS grant is paid to the Town Treasurer. (T.35.)[3] Mr. Brewer further testified to other grants paid directly to the school districts, specifically transportation grants, school construction grants, special education grants and bonus grants. (T.35, 36, 49.) These grants similarly are based on a sliding scale factoring in the town's ability to pay. (T.36.) The ECS grant however is the primary grant. (T.36.)

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[3] On cross examination, Mr. Brewer admitted that he had no actual knowledge if once paid to the municipality, the ECS was indeed applied to education. There was however no direct evidence offered by plaintiffs to prove otherwise. (T.51-54.)

Mr. Brewer prepared three exhibits for the Court, which were introduced into evidence without objection. (T.43, 46, 48.) Said exhibits were calculated using data extracted from 2002-03 ECS calculations concerning the towns comprising Region One. Exhibit 7 delineates the primary data used to determine each town's respective wealth under the ECS formula. Said formula includes the three-year average ENGL for each town factoring in per capita income, median household income and the ECS wealth adjusted to the town's ENGL resulting in an income ranking of all 169 towns in the state. The last element, the base aid ratio represents the percentage of the ECS grant that the Town would receive of the base foundation of the just under $5,900 per pupil. (T.38-42.)

Four of the towns comprising Region One, specifically Cornwall, Kent, Salisbury and Sharon rank in the top one third of Connecticut towns. Canaan ranks nearer the bottom of the one third at 55 with North Canaan ranked at the bottom of the second third at 107. (T.43, 44.) Utilizing the base aid ratios, the four wealthiest towns receive the minimum of 6% of the ECS. (T.44.) Canaan receives just under 17%. North Canaan receives just over 45% of the foundation grant. (T.44.).

Exhibit 8 demonstrates the ECS entitlement, 2002-03, for each town, the total number of weighted students and the resulting grant per need student. (T.45). This entitlement is weighted based on poverty, performance on the State Mastery examination, which would indicate need for remedial services, limited English proficiency, et cetera. (T.46). Again Mr. Brewer testified that the aid ratios for each town reflect their relative ability to pay. (T.47). Accordingly, Cornwall, Kent, Salisbury and Sharon receive between $200 to $300 per need pupil whereas Canaan receives just under $1,000 and North Canaan, the town in the region with the lowest fiscal capacity, receives over $3,000 per pupil. (T.47).

The final exhibit, Exhibit 9, reflects the relative share of the expenditures made on behalf of the Region One students coming from local sources versus the funds derived from state grants. (T.48). Again, state grants were distributed according to the respective wealth of the Towns. North Canaan received 32%, Canaan, 12% with the four wealthier towns receiving between 4% to 5%. (T.49.)

The Attorney General concluded his case with the testimony of Mr. Brewer. Counsel for the plaintiff proceeded with his case calling the Plaintiff Gabriel Seymour. The Plaintiff introduced into evidence copies of her tax records and payment to the Town of Canaan. (Exhibits A & B.) The Plaintiff then attempted to introduce documents C-1 through C-5 which were various graphs and charts purporting to demonstrate the bases for her mathematical calculations outlining the inequities of Connecticut General Statute §10-51(b) alleged in her complaint. The Court excluded these documents from evidence on the basis of hearsay as Plaintiff failed to produce the original reports from which she had gleaned her original data supporting her calculations. (T.78.) The Court did state that the witness could testify from her recollection as refreshed by her notes and calculations in C-1 through C-5 for identification. (T.78.) This was never done. The Court did allow the Plaintiff's requests for Admissions and their responses. (T.83-84.)[4]

Conclusion

In reference to the Plaintiff Schurk, the only evidence before this Court is the Plaintiff's status as a taxpayer. She did not testify as to her particular injury. Credible and demonstrative evidence offered by the Attorney General established that her taxes did not increase as a result of the application of Conn.

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[4] The Court reviewed the responses to the Requests for Admissions. The responses did not support the Plaintiffs' allegations.

Gen. Stat. 10-51(b). Nor did Ms. Schurk prove any other injury. The Court holds that the Plaintiff Schurk has failed to demonstrate standing pursuant to the tenets delineated in *Sadloski v. Manchester*, 235 Conn. 637 (1995).

In reference to the Plaintiff Seymour, she testified that she had been injured by the cost allocation in that it was unfair and unequal in that taxpayers in the Town of Canaan can pay "four, five, six times as much as a similarly situated taxpayer in another regional member town . . ." (T.88.) This statement is unsupported by evidence and in fact the Attorney General's analysis provided by Ms. Elliott's Exhibit 6 clearly refutes this statement. Ms. Seymour provided no evidence that her taxes have increased as a result of the cost allocation provided by Conn. Gen. Stat. 10-51(b). Considering also the entire fiscal context, taking into account the benefits and burdens of the ECS, *Seymour v. Region One*, 261 Conn. at 491, the Court is compelled to conclude that Ms. Seymour has failed to establish the great harm required to confer standing. In addition the Attorney General has clearly established the benefit of the ECS to offset any claimed taxpayer harm. The Motion to Dismiss is granted.

ORDER

The Court having heard the evidence on the Attorney General's Motion to Dismiss, it is herein ordered. Granted.

The Court

Black, Judge

9/23/03

APPELLATE COURT
OF THE
STATE OF CONNECTICUT

A.C. 24689

GABRIEL SEYMOUR ET AL.

v.

REGION ONE BOARD OF EDUCATION ET AL.

BRIEF OF PLAINTIFFS-APPELLANTS
WITH SEPARATE APPENDIX

(ON PLAINTIFFS' APPEAL FROM
LITCHFIELD SUPERIOR COURT

THE HONORABLE MARYLOUISE S. BLACK
AND THE HONORABLE ALEXANDRA DIPENTIMA)

FILED: NOVEMBER 13, 2003

* * *

POINT III

THE TRIAL COURT FAILED TO PROTECT PLAINTIFFS FROM THE ATTORNEY GENERAL'S PUNITIVE STRATEGY OF HARASSMENT, INTIMIDATION AND PUBLIC HUMILIATION VIOLATING THEIR CONSTITUTIONAL RIGHTS OF ACCESS TO THE COURTS AND OF EQUAL PROTECTION

The following point involves important State and Federal Constitutional issues individual rights and is subject to *de novo* standard of review. The facts are undisputed.

On August 20, 2002, the Supreme Court directed the trial court to conduct the following evidentiary hearing:

> It may well be that, as the defendant contends, the educational cost sharing formula is sufficiently closely allied with the formula set forth in §10-51(b) that its benefits must be taken into account, and that those benefits, overall, sufficiently compensate for the taxpayer harm claimed by the plaintiffs. Such findings, however, cannot be reached on the present record. An evidentiary hearing is therefore required.
>
> 261 Conn. 475, at 491 (2002)

Using the pretext of preparation for the evidentiary hearing, the Attorney General initiated a disclosure strategy calculated to force individual plaintiffs to withdraw from the case by threatening to expose their private affairs to public view.[10]

On November 18, 2002, Defendant Blumenthal served Notices of Depositions on four of the named plaintiffs, requiring them to produce:

> "Complete copies of deponent's federal and state income tax returns for the last five (5) years."

On November 28, 2002 plaintiffs moved for a protective order, which was denied without opinion on December 7, 2002 (DiPentima, J.)

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[10] The only plaintiff omitted from this strategy was Mrs. Schurk, a widow on a pension who plainly lacks the resources to carry on this litigation on her own. This omission reaffirmed the cynical nature of the strategy employed by the AG, and showed his arguments on the relevance of personal income tax returns on the issue of plaintiffs' standing to be wholly false.

Following extensive newspaper publicity, plaintiffs filed an Objection to the advance production of their tax returns or their disclosure to unauthorized persons. In response, Defendant Blumenthal filed a motion for an Expedited Order requiring plaintiffs to produce their tax returns and to answer all questions concerning their personal finances, which was granted by the trial court on February 3, 2003 (Black, J.).

On January 23, 2003, following examination of two of the plaintiffs by Defendant Blumenthal's Assistant concerning personal matters unrelated to the issues in the case (including political party affiliation) plaintiffs filed a further Motion for Protective Order, which was also denied by the trial court (Black, J.).

On February 25, 2003, three of the plaintiffs, facing the threat of massive local publicity concerning their personal financial affairs, withdrew from the case under protest.

On February 27, 2003, at the outset of the evidentiary hearing on standing, plaintiffs served and filed with the trial court a Memorandum in Opposition to Unsealing of Tax Returns or Public Questioning about Their Personal Finances, pointing out its chilling effect on their First Amendment Right of access to the courts. Notwithstanding plaintiffs' written objection, Defendant Blumenthal proceed to question Plaintiff Seymour in open court concerning personal financial matters having nothing to do with standing.

In their post-hearing brief, plaintiffs once more objected to the violation of Plaintiffs' First Amendment rights by Defendant Blumenthal in Point VI thereof.

Legal Grounds for Seeking Protective Orders

1. Superior Court Rule Sec. 13-5 gives a party the right to move for a protective order to prevent "annoyance, embarrassment, oppression". Denial of such a motion may property be appealed following final judgment.

2. Superior Court Rule Sec. 13-10 gives a party the right to object to document production, the overruling of which may also properly be appealed.

3. Superior Court Rule Sec. 13-39(c) gives a party the right to move to terminate or limit the scope of a deposition on the ground that it is being conducted in a manner "unreasonably to annoy, embarrass, or oppress", the denial of which motion may also be appealed after entry of final judgment.

4. The First Amendment to the U.S. Constitution and Article First, Section 10 of the Connecticut Constitution both guarantee citizens a right of access to the courts. Compelling disclosure of personal finance information has a "chilling effect" on First Amendment rights. See *Buckley v. Valeo*, 424 U.S. 1, 64 (1977) and cases cited therein.

Publicity Stemming From Attorney General's Statements

The objective of the Attorney General's strategy was revealed in the memorandum of law he filed in opposition to plaintiffs' first motion for a protective order:

> "If the four named plaintiffs other than Ms. Seymour *wish to withdraw their claims, they are free to do so.*"
>
> (Emphasis added.)(Memo 12/3/02, p5)

Plaintiffs' motion for a protective order — and the Attorney General's response — quickly became front-page news in the *Lakeville Journal*, the principal newspaper serving the Town of Canaan and neighboring towns in Region One. A four-column-wide front-page headline declared:

> **PLAINTIFFS IN REGION 1 LAWSUIT RELUCTANT TO REVEAL FINANCES**
>
> FALLS VILLAGE — Gabriel Seymour and four other plaintiffs who have brought a lawsuit against the Region 1 Board of Education and state Attorney General Richard Blumenthal have filed a motion with the

> Litchfield Superior Court saying they do not want to provide information on their state and federal income taxes and on taxes paid on their motor vehicles.
>
> (A31)

Plaintiffs filed an Objection to Document Production following the *Lakeville Journal* newspaper article, seeking to limit public access to plaintiffs' income tax returns and to block disclosure of their contents to the press. (A29)

The Attorney General opposed any restriction on public disclosure of plaintiff's finances(A33)and the Court (Black, J.) ordered plaintiffs' to produce their personal State and Federal income tax returns for five years, with no restrictions on disclosure to the public or the press. (App. p. J)

Plaintiffs Seymour and Coolidge appeared at the Attorney General's office for examination by the Assistant Attorney General along with counsel for Region One and intervenors Salisbury and Canaan. Ms. Seymour delivered her personal income tax returns to the Attorney General in a sealed envelope. Her counsel instructed her not to answer any questions about the contents of her tax returns until the Attorney General explained the purpose. He never did so. At the end of the first day of depositions, plaintiffs filed a renewed motion for a protective order based on the Attorney General's questions to Plaintiffs Seymour and Coolidge, not only about personal income and private financial affairs, but also about their children, living arrangements, and even political party affiliation. (A34) The court held an open hearing on plaintiffs' motion on February 3, 2003 attended by representatives of the press.

During the court hearing on plaintiffs' renewed motion for a protective order, the Assistant Attorney General declared that his purpose *was to inform the public at large* that any persons who brought a taxpayer action would face similar

interrogations concerning their tax returns, personal financial affairs, and "biases". This is exactly what he said in open court in the presence of newspaper reporters:

> This is a case of significant public importance. It should not be tried under some sort of veil of secrecy. This is a case that will affect public school children, not just in Region One, but throughout the state. *Plaintiffs cannot come into court, respectfully and put the machinery of the courts in motion and then try to hide under a rock with respect to relevant questions of their financial circumstances* and whether they have standing to put these important, indeed momentous issues before the court. This is not some pet project of a couple of taxpayers. It's more serious than that. This has the potential for threatening the financing of public schools in the State of Connecticut. *If people want to be heard in a public forum about this, they have to be willing to answer questions about whether they have the right to bring the case to this forum at all.*
>
> *So I think it's important that a message not be sent to the public and to the State at large that this kind of case is going to be conducted under some sort of secret orders, some sort of sealing where the nature of the plaintiffs and their biases and their interests* and indeed whether they have standing, is something that *can't be viewed by the public.*
>
> (Emphasis added.) (A45-46)

This declaration in open court by the Attorney General's representative left no doubt about its meaning. Its purpose was and is unmistakable — to discourage the bringing of taxpayer suits by threatening every taxpayer in Connecticut with similar harassment and public humiliation if he or she should attempt a similar course of action.

The Court thereupon denied plaintiffs' motion for a protective order and authorized the Attorney General to continue his interrogation of plaintiffs about their personal incomes and private affairs.

The following story then appeared in the *Waterbury Republican-American*:

PLAINTIFFS MUST REVEAL FINANCES

LITCHFIELD — A Superior Court judge has ordered former Falls Village First Selectman Gabriel Seymour and her co-plaintiffs in a lawsuit against the Region 1 School District to reveal their personal income taxes and other financial information.

At a hearing in Bantam Superior Court Monday Judge Marylouise Black ruled on a deluge of motions filed recently by C. Thomas Furniss, the plaintiffs' attorney, in an attempt to shield Seymour and the others from having to disclose personal financial records during depositions.

"The plaintiffs brought the action. They cannot then run from the action and state that they cannot be deposed or that they should not be required to answer to the defendants," Black said.

(A54-A55)

Faced with the Attorney General's threats, and its unequivocal endorsement by the Superior Court Judge, three of the plaintiffs withdrew from the case, leaving plaintiffs Seymour and Schurk to continue the fight alone. The reason given by the three plaintiffs in their written withdrawals was significant:

It is plaintiffs' belief that the Superior Court's ruling in this case requiring any taxpayer who challenges the fairness of property taxes to turn over all of his or her

personal income tax returns for five years and undergo unlimited questioning as to his or her "wherewithal" and possible "bias" is unreasonable and violates individual rights under the Fourteenth Amendment as well as state constitutional guarantees of free speech, due process and equal protection.

(A51)

Attached to the withdrawal notices were copies of *four* local newspaper stories demonstrating the high level of publicity surrounding the Superior Court's order requiring plaintiffs to disclose the contents of their tax returns and details of their private lives and personal finances. (A52-A57)

The Public Interrogation About Personal Finances During Court Hearing

Plaintiffs also sought to avoid irrelevant questioning into personal financial affairs during the evidentiary hearing itself. At the outset of the hearing in Litchfield Superior Court on February 27, 2003, plaintiffs handed up to the Court a memorandum of law "in opposition to unsealing of tax returns *or public questioning about their personal finances*." (A58) (Emphasis added.)

The Court totally disregarded plaintiffs' memorandum and allowed the Attorney General to question Plaintiff Seymour about personal financial details clearly unrelated to the case.[11]

---

[11] *By Mr. Urban*

Q Now the property that you live in and pay taxes on, you've run a business out of that property, correct?

A Correct.

Q And in your highest grossing year, that business grossed over $100,000, correct?

A Correct.

Q And, in fact, you've had an employee working out of that property for you for several years, have you not?

MR. TRUEBNER: I'm going to object, Your Honor, on grounds of relevancy to these questions.***

THE COURT: I'm going to allow it.

By Mr. Urban: (Continuing)

Q Now, the property that you pay taxes on as our home and out of which you operate the business, you paid $177,000 in cash for that property?

A I did.

Q And thus you hold no mortgage on the property?

A Correct.

MR. TRUEBNER: I renew the objection, Your Honor.***

THE COURT: I'm going to allow the question.

By Mr. Urban: (Continuing)

Q The adjacent property on which you pay taxes was purchased by your mother, correct?

A Correct.

Q And you, in fact, earn — earn rent on that adjacent property from someone who leases the small dwelling that's on the property, correct?

A Correct.

Q And —

A I have — sorry.

Q Currently you're attending law school?

A Correct.

Q And your father's paying for that, although you're going to repay him?

A Correct.

Q And that's about $22,000 a year?

A Correct.

The results soon appeared in the *Waterbury Republican-American* under the headline:

SEYMOUR DISCLOSES
PERSONAL FINANCES
IN TAX CHALLENGE

*** Seymour was required by the court to provide her personal income information to the state's assistant attorney general, Ralph Urban, in depositions. Under questioning from Urban during the hearing, Seymour testified that:

- She paid $177,000 in cash for her home in Falls Village and, therefore, was not required to carry a mortgage;
- Her mother gave her the adjacent property lot from which she earns rental income.
- She conducts a business out of her home, sometimes employing help, which has generated more than $100,000 during its best year.
- She has no children and no relatives in the Region 1 school system.
- She has never attended public schools.
- Her father is paying $23,000 a year to send her to law school.
- The car she drives belongs to her mother, who lives in Salisbury.

Q And the motor vehicle that you drive belongs to your mother?

MR. TRUEBNER: Judge, I'm going to renew my objection. We're really getting far afield at this point.

THE COURT: I would agree at this point.

MR. URBAN: I don't have anything further, Your Honor.

(2/27/03 Transcript, pp. 91-96)

> Truebner objected that Urban's questioning was irrelevant, but Urban argued that personal finance issues "go to the heart" of whether a taxpayer has standing to bring forth a lawsuit such as Seymour's.
>
> "The law can't be that a Bill Gates has standing as a taxpayer in the same order" as someone who earns a lot less, Urban said, otherwise the courts would be flooded with similar cases.
>
> (A96)

The Constitutional Right of Access to the Courts Is at its Strongest in Taxpayer Actions That Challenge Government Policies

The United States Supreme Court has repeatedly held that the right of access to the courts is protected under the First Amendment of the United States Constitution. *See e.g., Harrison v. St. Louis & S.F.R. Co.*, 232 U.S. 318, 332 (1914); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *In re Primus*, 436 U.S. 412, 426 (1978); *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983); *BE&K Constr. Co. v. NLRB*, 122 S. Ct. 2390, 2396 (2002). Recently a Connecticut Superior Court confirmed that the Connecticut Constitution recognizes a similar right:

> Article first, § 10 of the constitution of Connecticut provides that "all courts shall be open, and every person for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale denial or delay." "Thus does the First Amendment to the U.S. Constitution grant the right of free access to the courts for the remediation of civil wrongs and Section 10 of Article First of the State Constitution confers a similar right." *Connecticut National Bank v. Mase*, 1991 Conn.

Super. LEXIS 364, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 269180 (Jan. 31, 1991) (Flynn, J.) (3 Conn. L. Rptr. 285).

New Milford Sav. Bank v. Jajer, 2000 Conn. Super. LEXIS 3619, 12, Superior Court, Judicial District of Litchfield.

The United States Supreme Court has explained that "the right of access to the courts is . . . but one aspect of the right of petition" guaranteed by the First Amendment. *California Motor Transport Co.*, 404 U.S. at 510. As such, the right is most squarely implicated when litigants "use . . . courts to advocate their causes and points of view." *BE&K Constr. Co. v. NLRB*, 122 S. Ct. at 2396 (quoting *California Motor Transport Co.*, 404 U.S. at 510.) *See also NAACP v. Button*, 371 U.S. 415 (1963); *In re Primus*, 436 U.S. 412, 426 (1978). Following from the "same philosophy" that protects political protest directed at other branches of the government, *California Motor Transport Co.*, 404 U.S. at 510, the federal constitutional right to access to the courts is at its strongest when it protects litigation, such as taxpayer actions, aimed at challenging government policies.

Compelled Disclosure of Personal Financial Information Has a Chilling Effect on the Right of Access to the Courts

The United States Supreme Court "has found in a number of cases that constitutional violations may arise from the deterrent, or 'chilling' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights." *Laird v. Tatum*, 408 U.S. 1, 11 (1972) (*citing, e.g., Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); *Baggett v. Bullitt*, 377 U.S. 360 (1964).)

The Supreme Court has "repeatedly found that compelled disclosure . . . can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64 (1977) (*citing, e.g., Gibson v. Florida Legislative Comm.*, 372 U.S. 539 (1963); *NAACP v. Button*, 371 U.S. 415 (1963); *Shelton v. Tucker*, 364 U .S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958). "Significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP v. Alabama* we have required that the subordinating interests of the State must survive exacting scrutiny. . . . This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." *Buckley*, 424 U.S. at 64 (*citing NAACP v. Alabama*, 357 U.S. at 461.)

Federal and state statutes alike protect the confidentiality of federal income tax returns. *I.R.C.* § 6103. *Conn. Gen. Stat.* § 1-19(b). While neither the Supreme Court of the United States nor Connecticut state courts have ruled directly on the matter, numerous federal courts have extended this protection to the discovery process. *See e.g., Poulos v. NAAS Foods*, 959 F.2d 69, 74-75 (7th Cir. 1992); *Premium Serv. Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir. 1975) (holding that tax returns may not be discovered in antitrust suit); *Federal Sav. & Loan Ins. Corp. v. Krueger*, 55 F.R.D. 512, 514 (N.D. Ill. 1972) (determining that tax returns may not be discovered where not made an issue); *Payne v. Howard*, 75 F.R.D. 465 (D. D.C. 1977) (holding that I.R.C. section 6103 should be broadly construed to further a policy of preventing indiscriminate disclosure of income). *Federal Sav. & Loan Ins. Corp.*, 55 F.R.D. at 514 (N.D. Ill., 1972) presents a typical rationale for such a policy:

> The court recognizes that the statutes cited do not provide for absolute privilege of returns even in the hands of the government. . . . However, it is the opinion of this court that the statutes cited reflect a valid public policy against disclosure of income tax returns. This policy is grounded in the interest of the government in full disclosure of all the taxpayer's income which thereby maximizes revenue. To indiscriminately compel a taxpayer to disclose this information merely because he has become a party to a lawsuit would undermine this policy. . . . Although many district courts have addressed themselves to this issue there is a paucity of opinions directly in point from Court of Appeals and the Supreme Court. After a complete review of the cases it is the opinion of this court that the case of *Kingsley v. Delaware, Lackawanna & Wester R. Co.*, supra, represent the best view. In that case the court carefully reviewed the authorities and came to the conclusion that the tax returns were subject to discovery only "where a litigant himself tenders an issue as to the amount of his income."

The harassment of plaintiffs by the Attorney General described above, and the orders of the Superior Court supporting the Attorney General's actions, tainted the proceedings below and require reversal of the order of dismissal.

Such actions by judges and state officials destroy the nation's most precious citizen rights, which are vital in small towns like Falls Village in the Town of Canaan. It is the role of the Connecticut courts to protect citizen access to the courts, not to block and discourage it as two Superior Court judges have done in this case. This is the essence of democratic government, which has its roots in small towns all across the country.

The Superior Court's Memorandum of Decision and the Defendants' Post-Hearing Memoranda *make no reference whatsoever to plaintiffs' incomes or other personal financial affairs as having any bearing whatsoever on plaintiffs' standing*. These tacit admissions by the parties responsible for the harassment, intimidation and public humiliation of plaintiffs demonstrates that their clear intent was not evidentiary but to punish plaintiffs for exercising their rights and to warn other citizens not to do the same.

Small town newspaper publicity may seem like a small matter to outsiders, but to the individuals involved and to their watchful neighbors, this is the most important forum both for public humiliation and for protection of their rights. As Delegate Eleanor Roosevelt stated to the United Nations in 1948:

> Where, after all, do universal human rights begin? In small places close to home — so close and so small they cannot be seen on any maps of the world. Yet the are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

Forcing Disclosure of Plaintiffs' Tax Returns on a Selective Basis Violated Their Equal Protection Rights

The Attorney General's avowed justification for requiring production of personal income tax returns and for his questioning into private financial and personal affairs was to meet the legal standards in *Sadloski*.

Why, then, did he only demand such information from four of the plaintiffs but not the fifth — Joyce Schurk? The reason was and is self-evident: Mrs. Schurk lacks the resources to conduct this litigation on her own. The cost of multiple court and deposition appearances, plus appeals, is far beyond the reach of a person owning a modest home on property with an assessed value of less than $71,000. The defendants obviously could crush any effort by Mrs. Schurk alone to vindicate constitutional rights of equal taxation for herself and her fellow town taxpayers. The people the defendants wanted to get out of the case were those with the means and business experience to keep fighting against oppressive and unconstitutional government action.

Attorney General Blumenthal is named as a party to this action solely in his public capacity as a state official, pursuant to the requirements of law. This public official, supported by rulings of the Litchfield Superior Court, has conducted a selective series of personal attacks against four of the five taxpayer plaintiffs in this case, explicitly calculated to force their withdrawal. The cynical strategy initiated by Connecticut's highest legal officer to force withdrawal of the four plaintiffs who have the greatest resources to pursue this declaratory judgment action, and leaving the burden of litigation on the plaintiff who has the smallest resources, violates the most rudimentary concept of equal protection of the laws.

GABRIEL SEYMOUR ET AL. *v.* REGION ONE BOARD OF EDUCATION ET AL.
(SC 17184)

Sullivan, C. J., and Norcott, Palmer, Vertefeuille and Zarella, Js.

Argued November 29, 2004 — officially released June 14, 2005

Gabriel Seymour, pro se, with whom, on the brief, was *Peter L. Truebner*, for the appellants (named plaintiff et al.).

Ralph E. Urban, assistant attorney general, with whom, on the brief, were *Richard Blumenthal*, attorney general, and *Richard J. Lynch*, assistant attorney general, for the appellee (defendant Richard Blumenthal).

Opinion

PALMER, J. This case returns to us for a second time. The named plaintiff, Gabriel Seymour, among others,[1] commenced this declaratory judgment action challenging the constitutionality of General Statutes § 10-51 (b),[2] which establishes the

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[1] In addition to Seymour, Thomas R. Coolidge, Susan Dempsey, Stephen W. Jenks and Joyce Schurk, also were plaintiffs. Coolidge, Dempsey and Jenks have since withdrawn from the action. For reasons set forth in footnote 12 of this opinion, Schurk lacks standing to pursue this appeal. Therefore, the only remaining plaintiff is Seymour, whom we refer to throughout this opinion as the plaintiff.

[2] General Statutes § 10-51 (b) provides: "For the purposes of this section, 'net expenses' means estimated expenditures, including estimated capital expenditures, less estimated receipts as presented in a regional school district budget. On the date or dates fixed by the board, each town in the district shall pay a share of the cost of . . pital outlay, including costs for school building projects under chapter 173, and current expenditures necessary for the operation of the district. The board shall determine the amount to be paid by each member town. Such amount shall bear the same ratio to the net expenses of the district as the number of pupils resident in such town in average daily membership in the regional school

formula by which the state's seventeen regional school districts allocate costs among their member towns. After the trial court, *Cremins, J.*, dismissed the action on the ground that it presented a nonjusticiable political question and rendered judgment thereon, the plaintiff appealed. We reversed the trial court's judgment. *Seymour* v. *Region One Board of Education*, 261 Conn. 475, 477, 492, 803 A.2d 318 (2002). We concluded, however, that the trial court record was inadequate for a determination of whether the plaintiff had standing to bring the action and, accordingly, we remanded the case for an evidentiary hearing on that issue. Id. At the conclusion of that hearing, the trial court, *Black, J.*, dismissed the action for lack of standing and rendered judgment thereon, from which the plaintiff appealed.[3] We affirm the judgment of the trial court.[4]

The following relevant facts and procedural history are set forth in our opinion in *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 475. "The [plaintiff], who [is a

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district during the preceding school year bears to the total number of such pupils in all the member towns, provided that the board may recalculate such amount based on the number of pupils in average daily membership in the regional school district for the current school year and may adjust each member town's payment to the regional school district for the following fiscal year by the difference between the last such payment and the recalculated amount. Until the regional school district has been in operation for one year, such amounts shall be based on the average daily membership of pupils in like grades from each of such towns at any school at which children were in attendance at the expense of such towns during the preceding school year."

[3] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 65-1 and General Statutes § 51-199 (c).

[4] The plaintiff also claims that the trial court improperly denied her motion for a protective order in relation to several discovery requests. We do not reach this claim in light of our conclusion that the trial court properly dismissed the plaintiff's action for lack of standing.

taxpayer] in the town of Canaan, brought this declaratory judgment action against the defendants, Region One board of education[5] (board) and Richard Blumenthal, the attorney general,[6] seeking a judgment: (1) declaring § 10-51 (b) unconstitutional on its face and as applied; and (2) directing the board to change its system of cost allocation among its member towns so that the tax burden falls equally on all taxpayers in the regional school district served by the board. The [attorney general] moved to dismiss the complaint on the grounds that: (1) the [plaintiff lacks] standing; and (2) the [plaintiff's] claims are nonjusticiable because they present a political question. . . .

"In [her] complaint, the [plaintiff] made the following allegations. [She is a taxpayer] in Canaan, which is one of the six member towns of [the Region One school district]. . . . [See footnote 5 of this opinion.] The costs of education for high school students and for certain [students attending] kindergarten through eighth grade . . . are assessed on the towns by the board according to the formula set forth [in] § 10-51 (b). That formula assesses each member town an amount that 'bear[s] the same ratio to the net expenses of the district as the number of pupils resident in such town in average daily membership in the . . . district during the preceding school year bears to the total number of pupils in all the member towns. . . .' General Statutes § 10-51 (b). Because '[l]ocal property taxes are the principal source of revenue for public schools,' because the statutory formula 'disregards

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[5] The Region One board of education is an elected body established pursuant to General Statutes § 10-46 for the purpose of administering the affairs and educational programs of the Region One school district. The Region One school district is comprised of the towns of Canaan, Cornwall, Kent, North Canaan, Salisbury and Sharon.

[6] The towns of Canaan and Salisbury also intervened as defendants, and they, along with the board, adopt the brief filed by the attorney general in this court.

variations in the total taxable property in each town,' and because Canaan has substantially less valuable taxable property than every other town in the district, except for North Canaan, 'the tax burden on [the plaintiff] and other taxpayers' in Canaan for educating their students 'is substantially greater than the equivalent cost to taxpayers in every other member town . . . except for North Canaan.'

"The [plaintiff] further alleged that 'education costs constitute the single largest expense in most town budgets,' and that 'the unequal burdens of the present regional cost allocation formula sharply impact the total tax burden on small town taxpayers,' such as the [plaintiff]. 'As a result, § 10-51 (b) unfairly discriminates against small Connecticut towns by forcing them to pay an unequal share of the expenses of educating students [as compared to] their bigger and wealthier neighbors.'

"In addition, the [plaintiff] further alleged that '[t]he incidents of taxation should fall, as far as possible, equally on all similarly situated. Such equal taxation is mandated by the due process and equal protection provisions of both the United States and Connecticut [c]onstitutions. All persons similarly circumstanced should be treated alike. . . . The Region One cost assessment formula based simply on student ratios violates this constitutional principle because the tax burden per student falls much more heavily upon the taxpayers of Canaan (and North Canaan) than on similarly situated taxpayers of surrounding municipalities. This fundamental inequality of taxation can only be corrected by directing the establishment of a uniform tax rate applicable to all taxpayers throughout the Region.' The [plaintiff] offered, by way of further allegation, a 'constitutional . . . method for determining regional cost allocations . . . by dividing the projected total net education expenses for the region by the total equalized Grand List of taxable property for all member towns combined, thereby establishing a single regional [mill]

rate to be assessed equally against all property in all member towns.' "[7] *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 477-80.

The attorney general filed a motion to dismiss, claiming that the allegations of the complaint raised a nonjusticiable political question and, further, that the plaintiff lacked standing to bring the action. The trial court, *Cremins, J.*, agreed that the plaintiff's claim was nonjusticiable and, accordingly, dismissed the complaint on that ground. The trial court, *Cremins, J.*, did not reach the issue of whether the plaintiff lacked standing to bring the action. The plaintiff appealed, and we concluded, contrary to the determination of the trial court, *Cremins, J.*, that the plaintiff's claim is justiciable. Id., 484-89. With respect to the attorney general's proposed alternate ground for affirmance, namely, that the plaintiff lacked standing, we concluded that the record was inadequate for our determination of that issue. Id., 489. We further concluded that an evidentiary hearing was essential to that determination and, consequently, remanded the case for such a hearing. Id., 492.

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[7] We thereafter summarized "[t]he core of the [plaintiff's] complaint . . . as follows. First, the statutory formula set by § 10-51 (b), which requires each town to contribute to the district's educational expenses based on the per pupil cost of education — i.e., the total educational expenses of the district divided by the number of the town's resident students served thereby — deprives the [plaintiff], who [is a taxpayer] of a relatively property tax poor town, of [her] state and federal constitutional rights to due process of law and equal protection of the laws. Second, the only way in which this unconstitutionality may be remedied is by making the district into a single taxing district for the purposes of education, with a uniform mill rate. The district would then assess each town an amount based, not on the per pupil cost of education, but on the value of the real property in that town — i.e., by multiplying the uniform mill rate by the total assessed value of the town's real property." *Seymour v. Region One Board of Education*, supra, 261 Conn. 480.

The trial court, *Black, J.*,[8] thereafter conducted an evidentiary hearing. The attorney general adduced testimony from two witnesses, Lauren Elliott, a certified tax assessor and property valuation specialist, and Robert Brewer, the director of the division of grants management for the state department of education. Elliott, who was certified as an expert witness without objection, had been a tax assessor for seventeen years and, as of the date of the hearing, served as tax assessor for the town of Canaan. She indicated that, in the preceding five years, she had conducted the property reevaluations for five of the six towns comprising the Region One school district, namely, Salisbury, Sharon, Kent, Cornwall and Canaan. Elliott testified that the plaintiff owns two properties in Canaan, a parcel consisting of 6.05 acres on which the plaintiff's house is located, and a second, unimproved parcel, consisting of 4.11 acres, which is adjacent to the first parcel. As of 2001, the assessed value of the parcels was $103,100 and $28,200, respectively. For the 2002-2003 fiscal year, the plaintiff paid property tax of $3221.88 on the first parcel and $881.25 on the second parcel, or a total of $4103.13. In response to a question regarding how much the plaintiff would pay in property taxes if her properties were located in the other Region One school district towns, Elliott indicated that the plaintiff's property taxes would remain approximately the same in three of the other towns and would be notably higher in one of the other towns. According to Elliott's figures, they would be notably more in Salisbury, slightly more in Kent and slightly less in Cornwall and Sharon.[9] Elliott explained that she was

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[8] Hereinafter, all references to the trial court are to the court, *Black, J.*

[9] Specifically, Elliott testified that the taxes on properties identical to that of the plaintiff would be $3643.25 in Cornwall, $4552.18 in Kent, $3804.19 in Sharon, and $5265.72 in Salisbury. Elliott arrived at these amounts by multiplying the computer generated assessment figures by each town's mill rate. Elliott did not calculate what the plaintiff's taxes would have been if her property were located in North Canaan, the smallest and poorest of the Region One school district towns.

able to generate the hypothetical assessments by entering the characteristics of those properties, such as lot size and, for the improved parcel, the age, condition and size of the house, into a computerized assisted mass appraisal program actually used by each town to generate real property assessments.

Brewer testified that he heads the division within the state department of education that oversees the management and distribution of approximately $2.5 billion annually in state and federal education grants. Primary among them is the education cost sharing grant (ECS), which amounts to approximately $1.5 billion annually in education cost assistance that is distributed to the state's cities and towns. Brewer explained that ECS is an equalization grant designed to level the playing field between the state's wealthier and needier municipalities in terms of their ability to fund education. The amount of ECS money that a particular municipality receives depends on a variety of factors, including that municipality's equalized net grand list, median household income, per capita income and the number of students attending public school, a number that itself is weighted for factors such as poverty, English language proficiency and standardized test scores. Brewer further testified that, because money is distributed in a ratio that is inverse to a town's wealth, the wealthier towns in the Region One school district receive substantially less money per student under the ECS formula than Canaan and North Canaan, which, for the 2002-2003 fiscal year, received $967 and $3250 per student, respectively.[10]

The plaintiff testified on her own behalf. After placing copies of her tax records into evidence, the plaintiff also sought to introduce into evidence several exhibits, which she had prepared herself, purporting to demonstrate, by way of

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[10] For the 2002-2003 fiscal year, Cornwall received ECS money totaling $200 per student, Kent received $269 per student, Salisbury received $217 per student and Sharon received $238 per student.

various charts and graphs, the inequities of § 10-51 (b) as alleged in her complaint. The trial court, however, sustained the defendants' objection to those exhibits.[11] Although the trial court explained to the plaintiff that she could testify on the subject matter of the proposed exhibits and, if necessary, use those exhibits for the limited purpose of refreshing her recollection, the plaintiff tendered no such testimony. With respect to how she had been injured by § 10-51 (b), the plaintiff testified as follows: "The taxpayers in my town pay for services. The regional district is one pool of resources to pay for regional high school education services. Currently, the six member towns are assessed per student capita per town. There is no assessment per taxpayers within the entire region and the entire pool of resources. That's unequal. It's unfair and so taxpayers in my town can pay four, five, six times as much as a similarly situated taxpayer in another regional member town including the town of Salisbury, which is a coin's toss across the Housatonic River. It's unfair." The plaintiff concluded her case without calling any other witnesses.

The trial court thereafter dismissed the plaintiff's action on the ground that she lacked standing to bring the action. In its memorandum of decision, the trial court observed that the plaintiff had introduced no evidence to substantiate her testimony that Canaan taxpayers can pay significantly more than similarly situated taxpayers in other regional member towns or that her taxes otherwise have increased by virtue of the cost allocation formula of § 10-51 (b). The trial court further noted that the plaintiff's unsupported contention was "clearly refute[d]" by Elliott's testimony. The trial court

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[11] The defendants objected to the exhibits on hearsay grounds and because the plaintiff had not been qualified as an expert. The plaintiff has not appealed from the trial court's ruling excluding her proffered exhibits.

also concluded that the defendants "clearly [had] established [that] the benefit of the ECS . . . offset[s] any claimed taxpayer harm."

On appeal,[12] the plaintiff contends that the trial court's conclusions were clearly erroneous. The plaintiff maintains that, had the trial court performed the mathematical calculations set forth in the brief that she has filed with this court — calculations which she claims are based upon data gleaned from the attorney general's exhibits — the trial court necessarily would have reached a different conclusion.[13] The plaintiff also contends that the trial court improperly credited Elliott's testimony that the plaintiff's property taxes would be approximately the same or more in the other Region One towns. The plaintiff further argues that because real property is not a fungible commodity that can be moved from place

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[12] At oral argument, we were informed that Joyce Schurk no longer is a taxpayer in the town of Canaan, one of six towns comprising the Region One school district. See footnote 5 of this opinion. Because prospective relief was the only relief sought and because Schurk no longer pays taxes in the Region One school district, she lacks standing to pursue this appeal.

[13] Specifically, the plaintiff claims that the trial court should have deducted the ECS money received by each member town from the "per-student high school cost allocations charged by Region One to each member town," thereby yielding the "net cost per high school student. . . ." According to the plaintiff, the trial court then should have divided "the equalized net grand list figures . . . into the adjusted net cost per student," and then multiplied the quotient by 100,000. This, the plaintiff argues, would have yielded the "[t]ax [p]ayable per $100,000 of [e]qualized [a]ssessment."

Additionally, the plaintiff claims that the trial court "failed to recognize that [Elliott's] analysis of total real property taxes never broke out the portion of those taxes [that goes to pay] Region One high school costs." The plaintiff contends that, "had [Elliott] made such calculations, she would necessarily have concluded that the tax rates for Region One high school costs — even using the theoretical increased property values projected in her calculations — would still produce an unequal and unfair tax burden on [the plaintiff], resulting in substantial pecuniary injury. . . ."

to place, she could not buy comparable property in the other towns for the price that she had paid for her property in Canaan. Finally, the plaintiff claims that the trial court should have recognized, on the basis of Elliott's testimony regarding what the assessed value of the plaintiff's property would be in the other Region One district towns in comparison to what its assessed value actually is in Canaan, that Canaan property owners have suffered long-term, pecuniary injury from § 10-51 (b) in the form of "depressed property values."

The defendants first maintain that the trial court's conclusion that the plaintiff lacks standing is fully supported by the record. The defendants next contend that the plaintiff's claims violate basic precepts of appellate advocacy because they are predicated on a fact-based theory of pecuniary harm that was not raised in the trial court. Specifically, the defendants assert that, on appeal, the plaintiff "engage[s] in multiple calculations of numerical figures extracted from certain selected exhibits, and offer[s] as evidence the resulting figures." The defendants further assert that, "[n]ot only were none of these calculations, the resulting figures, or the supposed reasoning behind them presented to the trial court for review and challenge, they were never the subject of testimony under oath by a competent witness, subject to proper cross-examination." Alternatively, the defendants contend that, even if we were to consider and to credit the plaintiff's arguments on appeal, she has not established pecuniary harm of a magnitude sufficient to afford her standing to bring this action.[14] We agree with the defendants' contentions.

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[14] For example, the defendants claim that, even pursuant to the plaintiff's calculations, the actual difference between what taxpayers in Canaan pay and what taxpayers in Salisbury pay is negligible, amounting to just $13.46 per year on properties assessed at $200,000.

"In *Sadloski* [v. *Manchester*, 235 Conn. 637, 668 A.2d 1314 (1995)], we reaffirmed the basic tenets of taxpayer standing. The plaintiff's status as a taxpayer does not automatically give her standing to challenge alleged improprieties in the conduct of the defendant town. . . . The plaintiff must also allege and demonstrate that the allegedly improper municipal conduct cause[d her] to suffer some pecuniary or other great injury. . . . It is not enough for the plaintiff to show that her tax dollars have contributed to the challenged project. . . . [T]he plaintiff must prove that the project has directly or indirectly increased her taxes . . . or, in some other fashion, caused her irreparable injury in her capacity as a taxpayer. . . . [B]ecause standing is a practical concept, common sense suggests that a taxpayer who challenges a part of a particular governmental program must demonstrate his or her injury in the entire fiscal context of that program, taking into account both the burdens and benefits of the program, and not just by demonstrating that the presumably burdensome part of the program itself, divorced from the larger program of which it is a part, causes injury." (Citations omitted; internal quotation marks omitted.) *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 489-90. "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 485, 815 A.2d 1188 (2003). Because standing implicates the court's subject matter jurisdiction, the plaintiff ultimately bears the burden of establishing standing. See *Fink* v. *Golenbock*, 238 Conn. 183, 199 n.13, 680 A.2d 1243 (1996). Furthermore, "[a] trial court's determination that it lacks subject matter jurisdiction because of a plaintiff's lack of standing is a conclusion of law that is subject to plenary review on appeal. . . . We conduct that plenary review, however, in light of the trial court's findings of fact, which we will not overturn unless they are clearly erroneous." (Citation omitted.) *Connecticut Associated Builders &*

Contractors v. *Anson*, 251 Conn. 202, 209, 740 A.2d 804 (1999). "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Sargent* v. *Smith*, 272 Conn. 722, 728-29, 865 A.2d 1129 (2004).

On the basis of the record before us, we cannot conclude that the trial court's essential factual findings — that the plaintiff paid approximately the same or less in property taxes as similarly situated taxpayers in other Region One school district towns, and that the benefits of the ECS money offset whatever difference there possibly might be in those property taxes — were clearly erroneous. On the contrary, the trial court's findings were amply supported by the testimony of Elliott and Brewer. Furthermore, the plaintiff failed to adduce any evidence demonstrating that she had suffered the kind of injury that is a precondition to maintaining her taxpayer challenge to the constitutionality of § 10-51 (b). Instead, the plaintiff attempts, for the first time on appeal, to introduce a mathematical formula that allegedly supports her theory of pecuniary harm. This formula, however, never was presented to the trial court. The plaintiff similarly failed to adduce any evidence to support her argument that § 10-51 (b) effectively has depressed property values in Canaan. As we repeatedly have observed, "[i]t is the function of the trial court, not this court, to find facts. . . . [T]o review [a] claim, which has been articulated for the first time on appeal and not before the trial court, would result in a trial by ambuscade of the trial judge." (Citation omitted; internal quotation marks omitted.) *Simmons* v. *Simmons*, 244 Conn. 158, 187, 708 A.2d 949 (1998). We therefore reject the plaintiff's contention that the trial court was required to conclude that the plaintiff has standing to pursue this action.

The judgment is affirmed.

In this opinion the other justices concurred.